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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 103

THE GOSPEL ARMY, A CORPORATION,
Appellant,

vs.

THE CITY OF LOS ANGELES, THE BOARD OF SOCIAL SERVICE COMMISSIONERS, DEPARTMENT OF SOCIAL SERVICE, AND DAN O. HOYE, CITY CONTROLLER,
Appellees

STATEMENT AS TO JURISDICTION

APPEAL FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

ROBERT H. WALLER,
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 1216

THE GOSPEL ARMY, A CORPORATION,

vs. *Appellant,*

THE CITY OF LOS ANGELES, THE BOARD OF SOCIAL SERVICE COMMISSIONERS, DEPARTMENT OF SOCIAL SERVICE, AND DAN O. HOYE, CITY CONTROLLER,

Appellees

JURISDICTIONAL STATEMENT ACCOMPANYING APPLICATION FOR ALLOWANCE OF APPEAL FROM FINAL JUDGMENT IN GOSPEL ARMY v. CITY OF LOS ANGELES, ET AL.

Jurisdiction of the United States Supreme Court to entertain appeal in this case is sustained by the Fourteenth Amendment to the Constitution of the United States, and Section 237(a) of the Judicial Code, 28 U. S. C. A. Section 344(a) and (b), 8 F. C. A. Title 28, Sec. 344(a).

The state statute involved in this case is Ordinance No. 77,000 of the incorporated City of Los Angeles, California, which ordinance is entitled "Charities." It contains nineteen sections, some of which have many subdivisions, the 19th containing 33 subsections, the last 28 of which regu-

late "Pawnbrokers, Second Hand Dealers, Junk Dealers, Collectors," and said ordinance, through the provisions of said sections, purports to regulate all public solicitations of donations for charitable purposes and it prohibits any such solicitations without strict compliance with its provisions, and violations thereof are made punishable as penal offenses.

Plaintiff is a religious organization having solicitors who secure donations of money and goods, which goods are sold for plaintiff by one solicitor and the proceeds and the money donated are used for plaintiff's religious activities, including charities, and hence has been held not to be "solely for evangelical, missionary or religious purposes."

To be exempted from the foregoing provision and all others of the ordinance relative to solicitors and solicitations from the public it is provided in Section 44.16 of the ordinance that such solicitations must be "made solely for evangelical, missionary or religious purposes."

Said ordinance expressly requires: That any person who seeks to solicit donations for charity shall first apply to the "Department of Social Service" of said city for a permit or license, and that the organization for which such solicitation is to be made shall not authorize such solicitation unless such application has been made. (Ord. Sec. 44.05.) That said application of such person, called "Notice of Intention," shall contain complete information as follows:

"Charity Solicitation—Notice of Intention:

"No person shall solicit, nor shall any officers or member of any association authorize any person to solicit, any contribution for any charitable purpose unless, within the fiscal year of the City in which such solicitation is made and at least ten (10) days prior to the beginning of such solicitation, there shall have been filed with the Department, on a form furnished by

said Department, by such person or association upon whose behalf the solicitation is made, written Notice of Intention to solicit such contribution, which notice shall contain complete information as follows:

"(a) The purpose of the solicitation and use of the contribution to be solicited;

"(b) A specific statement, supported by reasons and, if available, figures, showing the need for the contribution proposed to be solicited;

"(c) The character of such solicitation and how it will be made or conducted;

"(d) The expenses of the solicitation, including salaries and other items, if any, regardless or from what funds such expenses are payable;

"(e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the solicitation;

"(f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention. The expenditures or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commissions or emoluments from such contributions, and the respective amounts thereof;

"(g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made;

"(h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified to as a true copy of the original of such resolution by the officer of such association having charge of the records thereof;

"(i) A statement that the signers of such Notice have read and are familiar with the provisions of this Article and will require all solicitors engaged in such solicitation to read and be familiar with all sections of this Article prior to making any such solicitation."

Section 44.06 of said ordinance provides that the "Board of Social Service Commissioners" of said city, may, if "in its opinion" the "Notice of Intention does not disclose sufficient information for the public concerning the facts hereinbefore required" concerning "the person or association" making such solicitation or for whom it is made, "then, upon the request of said Department, there shall be filed, in writing," within 48 hours after said request, such additional information as said Board requires thereon, and "if requested" the "Notice of Intention and additional information shall be signed by the association as well as the applicant for permit."

Section 44.03 authorizes "the Department" to "investigate the allegations of Notice of Intention, or any statement or report"; to "have access to and inspect and make copies of all books, records," etc. of the applicant for permit or those for whom the solicitation is to be made, and to require such additional information as "in the opinion of the Board" shall "be of assistance to the public to determine the nature and worthiness of the purpose for which solicitation is made."

No provision limits the number of calls for information which may be made by "the Department" or "the Board" or the time to be taken in their investigation before the Notice of Intention is approved or rejected.

In no section of said ordinance is it provided that a permit or license shall be granted after all required information has been furnished, and investigations have dis-

closed no fault in the applicant or the organization for whom solicitations are made.

However, by Section 44.03 it is provided that "the Department: Shall have power to issue all solicitors Information Cards," and "to charge a fee for supplying Information Cards," which fee is a nominal amount.

Said section further states as to the contents of the Information Card that it must "show:

> "(1) That same is issued as information for the public and is not an endorsement;
>
> "(2) The Board may, pursuant to Ordinance No. 34982, omit above provision and state that they endorse such charitable association;
>
> "(3) The pertinent facts set forth in Notice of Intention required under Section 44.05 of this Article;
>
> "(4) Any additional information obtained as shall in the opinion of the Board be of assistance to the public to determine the nature and worthiness of the purpose for which the solicitation is made; * * *"

Other sections regulate the methods to be used in solicitations for charity and the conditions with which the solicitor must comply.

Section 44.03 requires that solicitors must have the written authorization of the organizations for whom they solicit.

Section 44.12 directs that they exhibit to the prospective donee the Information Card and "allow him sufficient opportunity to read same" or read it to him, "before accepting any contribution solicited."

Section 44.15 compels the solicitor to tender to each donor a written receipt signed by the solicitor "which contains in addition to a description of the amount and kind of the contribution, substantially the following matters:

"(a) The name of the association, if any, in whose name or upon whose behalf the solicitation is made.

"(b) A statement as to whether the contribution solicited is to be applied for the general purposes of such association, if any, or for specific purposes, and if for specific purposes the nature thereof shall be clearly stated.

"(c) A statement that the Information Card, issued by the Department, was presented to the person making the contribution for his perusal prior to receipt by the solicitor of the contribution receipted for."

The solicitors' labors continue after donations have been received (Section 44.14) or are to be performed by the religious organization for whom he solicited for charity. This section reads:

"Solicitations—Report—Time—Expenses—Uses:

"Every person soliciting any contribution for any charitable purpose must file with the Department within 30 days after the close of any such solicitation or within 30 days after a demand therefor by the Department a report to the Department, stating the contributions secured from or as a result of any such solicitation, and in detail all expenses of or connected with such solicitation, and showing exactly for what uses and in what manner all such contributions were or are to be disbursed or distributed. Every such report shall be made on forms to be furnished by the Department, and signed by the persons or association filing or obligated to file the Notice of Intention and such report, if made by any such association, shall be signed by at least two officers thereof. Provided, that when any such solicitation is made by any such association such report need be filed only by such association and not by an individual solicitor engaged in any such solicitation."

Section 44.08 provides:

> "No person shall solicit any contribution for or on behalf of any charitable association, unless such association is maintaining a system of accounting whereby all donations to it and all disbursements made by it are entered upon the books or records of its treasurer or other financial officer."

Section 44.02 empowers "the Board of Social Service Commissioners" to "publish the results of any investigation which the Department of Social Service may have made relative to the application for permit to solicit and information acquired from an inspection of the books of the person or association on whose behalf solicitation is made," and to give "such publicity to any such results by such means as may be deemed best to reach the general public and persons interested."

The foregoing provisions deal with only one class of solicitors as described by said ordinance.

Further provisions designate a "promoter" as "any person who for pecuniary compensation or consideration received, or to be received, solicits * * * contributions for or on behalf of any other person or charitable association, corporation or institution."

Section 44.19, subdivision 1, of said ordinance reads:

> "No promoter shall in any manner whatsoever, solicit within the City of Los Angeles any contribution for any actual or purported charitable use, purpose, association, corporation or institution without license from the Board so to do."

To condense the other subdivisions of this section, only those provisions which are necessary to reveal the nature of the provisions of the statute in this case involved will be quoted. They read:

Section 44.19 continues:

"To obtain such license, such promoter shall make and file with the Board an application therefor in writing • • •

"(a) The name and address of the applicant, and if such applicant be a corporation, the name and address of each of its managing officers and agents, and, if it be an unincorporated association, firm or partnership, the name and address of each member of such unincorporated association, firm or partnership;

"(b) A succinct statement of facts showing that the applicant, if not a corporation or an unincorporated firm, association or partnership, is of good character and reputation, or if the applicant be a corporation that each of its managing officers and agents is of good character and reputation, or if the applicant be an unincorporated association, firm or partnership, that each of its members is of good character and reputation.

"(c) The general plan, character and method in or by which applicant proposes to conduct its or his business as a promoter.

"(3) Bund.

"(a) (As amended by Ordinance No. 81,618, approved Sept. 3, 1939). At the time of so filing with the Board an application for such license the applicant shall file and thereafter maintain with the Board a good and sufficient bond in the aggregate sum of Two Thousand Dollars ($2,000) running to the City of Los Angeles for the use and benefit of interested persons and parties, executed by the applicant and by two or more responsible sureties, or a surety company authorized to do business in the State of California, to be approved by the Board • • •

"(4) Fee.

"For filing such application the applicant shall pay a fee of $25.00 to the Board."

Subdivision 5 entitled "Investigation," fixes a standard upon compliance with which, if the Board, after such further investigation as it deems advisable, is satisfied with the applicant's showing, a license must be granted. It provides:

> "(a) That the applicant is of good character and reputation, or
>
> "That every managing officer or agent of the applicant if the applicant be a corporation, is of good character and reputation, or if the applicant is an unincorporated association, firm or partnership, each member thereof is of good character and reputation."

Subdivision (q)(a), added to said ordinance by amendment prohibits that a "promoter" permit any person acting under his direction for pecuniary compensation act as a solicitor unless such person "be registered as a solicitor by the Board," and (q)(b), requires that to be registered by the Board a person must appear before the Board, furnish proof of "good moral character, that his reputation for honesty is good" and furnish a bond "satisfactory to the Board" in the "sum of Five Hundred Dollars."

Section 44.16, which exempts "any association soliciting contributions solely from its members or solely for evangelical, missionary or religious purposes" further reads:

> "Provided, however, that in any case where it shall come to the attention of the Board that any solicitation has been or is being or intended to be made for evangelical, missionary or religious purposes but in such manner as in the opinion of the Board is calculated to give or may give the impression to the person or persons solicited in any such solicitation or to the public that the purpose of such solicitation is either in whole or in part charitable, then the Board, if in its opinion the public interest will be subserved thereby, shall investigate the matter of such solicitation and give publicity

to its findings thereon in such manner as it may deem best to advise the public of the facts of the case." (Reference being to the issuance of permits.)

Section 44.03, "Powers of Department," (1) and (2) reads:

"(1) That same is issued as information for the public and is not an endorsement;

"(2) The Board may, pursuant to Ordinance No. 34982, omit above provision and state that they endorse such charitable association;"

After defining the term "promoter" as a solicitor for a consideration who solicits contributions for another, Section 44.01 reads:

"• • • that no person who is a bona fide paid officer or employee of a social service agency endorsed by the Board of Social Service Commissioners, shall be considered a promoter within the meaning of this article."

Section 19, subdivision 2, after providing that an applicant for a promoter-solicitor's license must file "an application therefor in writing, reads: "In such application, the applicant shall set forth, in addition to such information as may be required by the Board: "Then follows provisions which have been quoted.

The section of said Ordinance No. 77,000 added by amendment, and now a part of Section 44.18, which is entitled: "Section 24.01. Pawn Brokers, Second Hand Dealers, Junk Dealers," is especially involved in this case, one issue therein being its applicability to the Gospel Army's method of sale of its donated articles for money to be used in its activities.

The following provisions of the section are accurately set forth in the majority opinion of the State Supreme Court as follows:

> "Section 24.01 of the Los Angeles Municipal Code defines a 'junk dealer' as 'a person having a fixed place of business in this City who goes from house to house or from place to place, gathering, collecting, buying, selling or otherwise dealing in any old rags, sacks, bottles, cans, paper, metal or other articles commonly known as junk.' A 'secondhand dealer' is 'a person engaging in, conducting, managing, or carrying on the business of buying, selling or otherwise dealing in secondhand goods, wares or merchandise.' Junk dealers and secondhand dealers must obtain a permit to engage in business from defendant City's Board of Police Commissioners. The following 'Requisites of Permits' are set forth in subsection (c) of Section 24.01,' (1) Persons desiring to obtain a permit to conduct, manage or deal in any business mentioned in subsection 'a' of this Section *Section* shall file an application in writing with the Board specifying by street and number the place where such business is proposed to be conducted or carried on; junk collectors having no fixed place of business shall specify in such application their residence by street number. The application shall be signed by the applicant and shall contain his residence address. (2) Before receiving an application for any permit the Board shall require the payment of such fees as are hereafter specified. (3) Upon receipt of such application the Board shall cause to be investigated the business of the applicant and location at which applicant proposes to engage in business as specified in said application. Thereafter the Board may issue a permit to the applicant which shall be effective for the remaining portion of the current year. (4) Persons operating under the provisions of this Section shall be required to secure an annual renewal of such permit commencing January 1st of the succeeding year in which such permit was granted

• • • The fees prescribed are set forth in subsection (d): '(1) Applications for permits other than provided for in this subsection shall pay the sum provided in Section 22.10; (2) Applications for special permits, the sum of $50.00; (3) Applications for annual permit renewal, the sum of $25.00; • • • Subsection (e) provides: '(1) The Board shall not grant any permit provided for in this Section to persons who fail, refuse or neglect to comply with the laws and ordinances relating to and regulating the business for which such permit is sought • • • No permit shall be granted to any person to conduct, manage, carry on or deal in any business mentioned in subsection 'a' of this Section whose permit has been revoked by the Board until six (6) months have elapsed after such revocation.' Holders of permits must keep a complete record of all goods purchased or received by them, which is open to inspection by any member of the police department. They must also file with the Chief of Police daily reports on prescribed forms of the goods purchased or received during the preceding day, describing the article and specifying the hour of the day when it was acquired, the name and address of the party from whom it was acquired, the height, age, sex, complexion, and other characteristics of that person. The hours of business are prescribed. Secondhand dealers must keep the articles received by them 21 days before selling them. The period prescribed for junk dealers is 3 days. • • •"

Said Section 24.01 (j) also provides:

"Signs. Persons defined in subsection 'a' of this Section shall maintain on the premises where said business is located, a sign plainly printed in the English language of sufficient size so that the same may be easy to read from the sidewalk in front of said place of business. Such sign shall state the business in which such person is engaged. If said business is located in an office building the sign shall be placed on the door of said office. If the business is located in a depart-

ment of any building the sign shall be placed at the entrance to said department."

Section 1, of an amendment enacted January 21, 1943, regulates the hours during which the businesses defined in subsection (a) which has been quoted, which regulation excludes certain holidays and generally the hours "between 8:00 o'clock P. M. Saturday and 8:00 o'clock A. M. of the following Monday."

Pursuant to power delegated by said ordinance, said Board by resolution enacted rules which provide that to constitute solicitation for religious, evangelical or missionary purposes, in order to be exempt from the provisions of said ordinance and from all interference by said Board and its agents as provided by Section 44.16, the solicitation must be "solely" for such purposes and the "cause" must be "purely religious"; that even though this requirement be complied with, if the person who does the actual soliciting receives any compensation whatever, said exempting provision cannot apply, and that unless 50% of any funds collected for charity is applied to the charitable use for which it is sought, without deductions for expenses or otherwise, no permit to solicit shall be issued.

By these rules the Board merely construes provisions contained in Section 44.16 and 44.18, supra.

The judgment and the decree sought to be reviewed by application for allowance of appeal was rendered on the 20th day of November, 1945, and became final on December 17, 1945, a petition for rehearing having been duly filed by the plaintiff and respondent, which said petition was by said State Supreme Court denied on December 17, 1945.

Statement of Grounds upon Which It Is Contended the Questions Involved Are Substantial

The case involves the validity of said "charities and reliefs" ordinance of the City of Los Angeles and the rules and regulations of the defendant Board and of the defendant Commission made pursuant to said ordinance, it being claimed by plaintiff, Gospel Army, that said ordinance, rules and regulations, on their face, and also as construed and applied by defendants, infringe plaintiff's right of religious liberty and the free exercise thereof, and its right to dispense charity, in violation of the First and Fourteenth Amendments to the Constitution of the United States, in that certain provisions of said ordinance, rules and regulations, in their application to religious organizations, and especially to plaintiff, constitute prohibited prior restraints upon the exercise of freedom of religion, and that certain of said provisions, in their application to plaintiff and to one of its solicitors, and to all religious organizations similarly situated, are arbitrary, unreasonable and unduly burdensome and that certain of them are arbitrarily discriminatory and deny the equal protection of said enactments to such organizations, and are thus especially prejudicial to plaintiff if enforced against it, and as defendants seek and threaten to apply them to it.

Among the sections and provisions of said ordinances prohibits solicitation unless the person who would solicit first files with the Department of Social Service of said City an application for a permit (called a Notice of Intention) to solicit in which nine items of information and data showing among other matters "the need for the contribution to be solicited, the expenses to be incurred, "including salaries"; what portion will be available for specific purposes named in said application, and much information con-

cerning the association, if any, for which the solicitation is to be made.

Section 44.06 authorizes the requirement of further information from the applicant if the Department considers that furnished sufficient for the public concerning the matter theretofore required.

Section 44.03 authorizes the Department to investigate (without limitation as to time) the allegations of the application for permit to solicit, and including inspection of books, papers, etc. of the applicant's employer, whether it be a church or other organization.

Section 44.03 authorizes, but does not require said Department to issue the permit (called Information Card) for which application has been made, and Section 44.01 inhibits solicitation by anyone without having secured such permit or license.

Section 44.18 requires that a "fee" of $25.00 be paid when the application for a license to solicit is filed, and the applicant must furnish a bond in the sum of $2,000.00.

Section 44.03 provides that the permit or license (called Information Card) shall show "the pertinent factor set forth in the application for permit (Notice of Intention) to solicit, and "any additional information obtained" as shall "in the opinion of the Board," "be of assistance to the public to determine the nature and worthiness of the purpose" of the solicitation.

The foregoing are among the provisions of said ordinance which plaintiff, the Gospel Army, has contended constitute prior restraints upon the exercise of their activities in furtherance of the promulgation of their religion.

Also, as to the quoted provisions of Sections 44.03, 44.06 and 44.18, it was claimed that they empower said Department, arbitrarily and unreasonably, without standard or guide, to call for information irrelevant to the matter in hand, and to insert in the permit prejudicial matters

derogatory to the solicitation and which may have been obtained from any source whatsoever, and of which the applicant has not been apprized.

Section 44.01 of said ordinance provides that "no person who is a bona fide paid officer or employee of a social service agency endorsed by the Board" of Social Service Commissioners, "shall be considered a promoter within the meaning of this article." and said section defines a promoter as "any person who for pecuniary compensation or consideration received solicits contributions * * * for or on behalf of any other person or charitable association, corporation or institution."

Section 44.03 authorizes the said Department to cause any Information Card (permit or license) to show that the issuance thereof "is not an endorsement"; or it may omit "the above provision and" state that they endorse such a charitable association."

The above provisions of Sections 44.01 and 44.03 are among the provisions of said ordinance which said Gospel Army has maintained are discriminatory and deny the equal protection of the law to those religious or charitable organizations and their solicitors which the Department may arbitrarily and capriciously refuse to endorse while endorsing others because of favoritism or for other irrelevant reasons, and that in the instant case said Gospel Army and its promoter-solicitor have been thereby denied the equal protection of the instant ordinance.

By amendment to said ordinance Section 24.01 of the "Pawn Brokers—Second Hand Dealers" ordinance of said city was added to Section 44.19 as "Sec. 24.01 Pawn Brokers, Second Hand Dealers, Junk Dealers, subsection (a) thereof defines the terms of the above title as follows:

> "Junk Dealer" shall mean a person having a fixed place of business in this City who goes from house to house or from place to place gathering, collecting, buy-

ing selling or otherwise dealing in any old rags, sacks, bottles, cans, paper, metal or other articles commonly known as junk.

"Junk Collector" shall mean a person having a fixed place of business in this City and engaging in, conducting, managing or carrying on the business of buying, selling or otherwise dealing in, either at wholesale or retail, any old rags, sacks, bottles, cans, paper, metal or other articles commonly known as junk.

"Pawnbroker" shall mean a person engaged in, conducting, managing or carrying on the business of pawnbroking, or the business of loaning money for himself or for any other person upon personal property, or the business of purchasing articles of personal property and reselling or agreeing to resell such articles to the venders or their assignees at prices agreed upon at or before the time of such purchase.""

Said Gospel Army has contended that the foregoing provisions of said Pawn Brokers, Second Hand Dealers, Junk Dealers Section is violative of its constitutional rights under the First Amendment and the due process clause of the Fourteenth Amendment to the Federal Constitution; that said entire section is inherently incapable of application to the activity of a religious organization which maintains a store from which donated articles are sold and the net proceeds used in furtherance of its religious work in spreading its religious beliefs, although, in that behalf, some part thereof is employed in its own charities. Plaintiff further has argued that the provisions requiring that the permit and licenses making daily reports to the police, keeping records, and other details are infringements of said constitutional rights and that the enforcement of such provision and of said Section 24.01 against plaintiff and its store and the employee who conducts it would take its property without due process of law in violation of said amendment.

Defendants have contended that, within the meaning of said Ordinance No. 77,000 and said amendment, the store is

a secondhand or junk store; that it in no way concerns religion or charity; that the provisions of such enactment are necessary for "control of crime and the protection of the public health and welfare," and they assert that the instant "regulations" are "designed to prevent or control crime and protect the public health, safety and welfare."

Again defendants have asserted that said provisions are "designed to protect the public from fraud," and are entirely lawful as an exercise of the police power.

The State court of last resort, the Supreme Court of California, reversed the judgment of the trial Court and held and adjudged that none of the provisions or requirements of said ordinance, rules and regulations on their face, or as applied to plaintiff or other religious organizations, violate plaintiff's, or infringe said constitutional rights or amendments to the Federal Constitution, and adjudged that each of said enactments and the requirements thereof and said ordinance as a whole constitute a valid exercise of the police power and that plaintiff is in every respect subject thereto, and in so holding and adjudging said Court rejected and disapproved as unsound each of plaintiff's said claims, some of which were cases which, it is believed, sustain jurisdiction and bring the instant case within the jurisdiction of said constitutional and statutory provisions. They are:

Cantwell v. *Connecticut*, 310 U. S. 296, 84 L. Ed. 295;
Murdock v. *Pennsylvania*, 319 U. S. 104, 87 L. Ed. 1292;
Zucht v. *King*, 260 U. S. 174, 176, 177, 67 L. Ed. 194.

Nature of the Case and Rulings of the Court Which Are Believed Bring the Case Within Jurisdictional Provisions to Sustain Jurisdiction.

The action involved was commenced by said Gospel Army by a complaint filed in the Superior Court of said State in and for the County of Los Angeles, and was tried on an

amended complaint wherein it was set forth that the defendants, City, Board, Commission and officers, had control and the enforcement of the charities and relief ordinance of said City of Los Angeles and that defendants had notified the plaintiff that it was subject to said ordinance and rules and regulations of the defendants' Board and Department pertaining thereto, and that "before plaintiff organization could continue their religious activities in the City of Los Angeles they must first apply for and receive from said Board of Social Service Commissioners and said Department of Social Service a permit authorizing said plaintiff organization to continue their religious activities," said Commissioners and Department having full power to pass on and reject all applications coming before them"; that defendant Hoye, City Controller "has demanded" of plaintiff that it pay to said City a "license to operate the store of plaintiff for the sale and disposal of salvaged personal property donated and given to plaintiff by the general public, the proceeds therefrom being used by the plaintiff in the furtherance of said religious organization, and that said Hoye and all of the other defendants contend and state that plaintiff is violating ordinances of said City and is subject to criminal prosecution, and said defendants have and are threatening criminal prosecution of plaintiff.

It was further alleged:

"That if this plaintiff is required to obtain a permit and the payment of the license as a condition of their soliciting and receiving donations as aforesaid, to be used in the furtherance of said religious activities, will amount to a prior restraint on the exercise of their religious activities within the meaning of the Constitution of the United States, both as to the First and Fourteenth Amendments thereof, and is an infringement upon the free exercise of their religious liberty as protected by the said constitution.

"That unless the said defendants are enjoined and restrained from doing the things hereinbefore mentioned the rights of the plaintiff to worship and carry on said religious activities and their right to the free exercise of their religious liberty will be infringed and said plaintiff will suffer irreparable injury therefrom" (Cl. Tr. pp. 17, 18).

Defendants' answer to plaintiff's amended complaint enlarged the issues by averments that plaintiff must secure "a permit" "from the Board of Police Commissioners" and "in not doing so plaintiff is subject to criminal prosecution therefor," and said answer also alleged that defendants "contend that under the provisions of Section 24.01 * * * of said Municipal Code a permit must be secured from the Board of Police Commissioners of the City of Los Angeles for the operation of the business which has been and now is being conducted in said city" (Cl. Tr. p. 27).

In said answer defendants "admit that defendants have notified plaintiff that it is subject to the rules, regulations and laws of defendant city pertaining to charities and relief." It is alleged "that before plaintiff can continue its activities in the City of Los Angeles "it must first apply for and receive from said Board of Social Servic Commissioners and said Department of Social Service a permit authorizing plaintiff to do so" (Cl. Tr. p. 28).

The answer further alleges:

"Answering paragraph IV thereof admit that defendants have notified plaintiff that it is subject to the rules, regulations and laws of defendant City pertaining to charities and relief and in this connection allege that plaintiff is subject to the sections of the charter and the ordinances of the City of Los Angeles pertaining to charities and relief, being particularly sections 70 to 88 inclusive and section 215 of the charter of the City of Los Angeles and sections 44.01 to 44.19 inclusive, of ordinance No. 77,000 as amended, which

ordinance was enacted on September 30, 1936 and became effective on November 12, 1936 and was entitled, "An Ordinance enacting a revision and codification of the regulatory and penal ordinances of the City of Los Angeles, to be known as the Los Angeles Municipal Code, providing penalties for violation of the provisions thereof and repealing all ordinances and parts of ordinances in conflict therewith," and which ordinance in so far as the sections thereof in question are concerned, was amended by ordinance No. 80,520 which was enacted March 1, 1939 and became effective April 8, 1939, ordinance No. 81,618 which was enacted September 15, 1939 and became effective October 19, 1939, and ordinance No. 84,121, which was enacted February 5, 1941 and became effective March 14, 1941.

"These defendants deny that they or any of them have notified plaintiff that before plaintiff can continue its religious activities in the City of Los Angeles it must first apply for and receive from the Board of Social Service Commissioners and the Department of Social Service a permit authorizing plaintiff to continue its religious activities in the City of Los Angeles.

"These defendants further allege that before plaintiff can continue its activities in the City of Los Angeles it must first apply for and receive from said Board of Social Service Commissioners and said Department of Social Service a permit authorizing plaintiff so to do; deny that plaintiff has carried on or is carrying on religious activities and deny that said charter and said ordinances empower said Board of Social Service Commissioners and said Department of Social Service arbitrarily to pass on and reject any applications of plaintiff to carry on religious activities and allege that said ordinances apply only to charitable activities; but said defendants do allege that before plaintiff, its officers or employees, may solicit any contributions for charitable purposes plaintiff must file with said Department

of Social Service Commissioners a notice of intention to solicit charitable contributions, as provided in section 44.05 and 44.06 of said Municipal Code" (Cl. Tr. pp. 24-26).

Upon the trial in the Superior Court of said State and said County, judgment was rendered for the plaintiff and it was decreed that the defendants and each of them and their departments and all persons acting under them be permanently restrained and enjoined from further interference and threatened acts which would in any way prevent the free exercise of the religious liability of said plaintiff (Cl. Tr. p. 37), which judgment was based upon findings that "the plaintiff is a duly constituted and functioning religious organization, by literature and word of mouth, of its religious beliefs, by and through its auxiliaries, and in the procuring of donations in the form of money and articles of value in the prosecution and furtherance of its religious activities."

The findings further state:

"It is true that the said Defendants have notified the Plaintiff that it is subject to the rules, regulations and laws of the said Defendants pertaining to charities and relief and that the said Plaintiff organization is subject to enforcement of said rules and regulations by the Board of Social Service Commissioners and the Department of Social Service, and that before said Plaintiff organization can continue their religious activities in the City of Los Angeles they must first apply for and receive from the said Board of Social Service Commissioners and Department of Social Service a permit authorizing said Plaintiff organization to continue their religious activities in said City of Los Angeles, the said Board of Social Service Commissioners and Department of Social Service having full power, under the ordinances of said City of Los

Angeles, to pass on and reject all applications coming before them; that the Defendant, Dan O. Hoye, the City Controller, of the City of Los Angeles, has notified and demanded of the Plaintiff that it must pay to the City of Los Angeles, through his office, a license to operate the store of Plaintiff, which store is being conducted by Plaintiff for the sale and disposal of salvaged personal property donated and given to the said Plaintiff by the general public, the proceeds derived therefrom is used by the Plaintiff in the furtherance of said religious organization, and that said Dan O. Hoye and all of the other defendants contend and state that the Plaintiff is violating the ordinances of the City of Los Angeles pertaining thereto and is subject to criminal prosecution, and the said defendants have and are threatening criminal prosecution of this Plaintiff.

"It is true that if this Plaintiff is required to obtain a permit and the payment of the license as a condition of their soliciting and receiving donations as aforesaid, to be used in the furtherance of said religious activities, will amount to a prior restraint on the exercise of their religious activities within the meaning of the Constitution of the United States, both as to the First and Fourteenth Amendment thereof, and is an infringement upon the free exercise of their religious liberty as protected by the said constitution.

"It is true that unless the said Defendants are enjoined and restrained from doing the things hereinbefore mentioned the rights of the Plaintiff to worship and carry on said religious activities their right to the free exercise of their religious liberty will be infringed and said Plaintiff will suffer irreparable injury therefrom" (Cl. Tr. pp. 32-34).

The Defendants duly appealed from said judgment and the appeal was lodged in the Supreme Court of the State of California.

By their briefs filed in said Court defendants contended that all of the provisions of said ordinance No. 77,000, in-

cluding Section 24.01 of the Municipal Code, are binding upon and applicable to plaintiff's activities in soliciting donations and in the disposition of donated articles through its store, and upon plaintiff's employee through whom such activities are conducted.

Defendants' opening and closing briefs on appeal support the view that said ordinance constitutes a valid exercise of the police power and that no provision thereof is violative of the First or Fourteenth Amendments to the Federal Constitution.

Because plaintiff's solicitors received compensation, said opening brief asserts:

> "The only permit required is for solicitors when they are soliciting in a commercial sense for their own profit. The purport of the ordinance is to treat such solicitors as conducting a business. Similarly, if religious organizations conduct various businesses in connection with their religious activities, we maintain that they are subject to the provisions of the ordinances of the City of Los Angeles regulating such businesses, which ordinances are designed to prevent or control crime and protect the public health, safety and welfare." (App. Op. Br. p. 39.)

Said opening brief asserts:

> "The Board of Police Commissioners of the City of Los Angeles Has Jurisdiction Over the Secondhand Store Operated by the Plaintiff, * * *" (App. Op. Br. p. 36.)

Under captions II, III and IV of said brief it is contended that upon the facts found by the trial Court the judgment is erroneous, because it is contended, the ordinance involved is merely regulatory and constitutes a "registration system."

On page 27 of said brief, in referring to sections of Ordinance No. 77,000 which relate to the "fee" required

for securing the Information Card or permit to solicit by solicitors and promoters, it is said:

"We are here dealing with a regulatory fee or tax and not a license tax for revenue," and it is repeatedly argued that "our charities and relief ordinance is a registration system," or in other words, to the same effect. (App. Op. Br. p. 27.)

In said opening brief defendants rely upon and quote excerpts from the opinions in *Cantwell* v. *Connecticut*, 310 U. S. 296, and *Murdock* v. *Pennsylvania*, 87 L. Ed. 827, in support of the contention that the exercise of freedom of religion "may be regulated."

Again it is claimed that said ordinance is "merely regulatory" and "a registration law" which in nowise violates the right to freedom of religion of a religious body which engages in charities. (App. Op. Br. pp. 26-29.)

This contention is applied to all and sundry, the requirements of said ordinances as to applications by solicitors, promotors, their employers, investigations, accounts, reports, posting of bonds, as to which it is said that a mere "registration system" is made up "to identify" would-be solicitors and promoters. (App. Op. Br. pp. 25-30.)

This opening brief claims that the acts of the officers of the Board and of the officers of the Department whereby they determined that the maintenance by plaintiff of its store is not a religious activity and that it is a "secondhand store" are not violative of any constitutional guaranty. (App. Op. Br. pp. 36-38.)

Under caption II said brief quotes excerpts from recent decisions of the United States Supreme Court in which the issue of freedom of religion was involved as having been violated by ordinances or statutes. (App. Op. Br. pp. 25-30.)

Throughout said brief the said ordinance is treated comprehensively and as a whole with little discussion of particular sections, but defense of its validity is based on the

claim that it is a lawful police regulation of charities and a mere registration and identification system. (App. Op. Br. pp. 28, 29, 30.)

In reference to plaintiff's store, defendants' opening brief quotes provisions of the city ordinance in Section 24.01 and quotes from California decisions, *Ex parte Lacey*, 108 Cal. 326; *Dobbins* v. *City of Los Angeles*, 139 Cal. 179; *In re Holmes*, 187 Cal. 640, and other cases to the effect that secondhand stores and other businesses are subject to regulation under the police power and argues that a state has power to regulate a business even though it "may incidentally interfere with the activities of religion." (App. Op. Br. pp. 36-39.)

Plaintiff's reply brief states: "This action is a challenge to the constitutionality of the Charities and Relief Ordinance and to any portions of the Pawn Broker's Ordinance within the purview of which it may be considered that such organizations (religious organizations) come." (Res. Rep. Br. p. 3.)

Said brief points out that defendants' opening brief does not question the sufficiency of the evidence to support the findings, but questions that the findings sustain the judgment. (Res. Rep. Br. p. 4.)

It points out that defendants' brief admits that the Department claims the right under the ordinance to "classify all solicitors who receive any compensation" as "promoters" "whether they work for a church" and even though the donations which they collect are used for "purely religious activities." (Res. Rep. Br. pp. 4, 5.)

Said reply brief argues that Section 44.16, upon which defendants' brief relies for said claim, is violative of plaintiff's right of freedom of religion; that dispensing charity is an integral part of religion (Res. Rep. Br. pp. 6, 7); that plaintiff's store as conducted by it, and as its proceeds are

used in furtherance of its religious activities, including "the bestowal of charity," is "within the domain of religion" and that "any law which enters into that domain is void," quoting *In re Darte*, 172 Cal. 47. (Res. Rep. Br. p. 13 *et seq.*)

Said reply brief challenges defendants' claim that the classification of plaintiff's store, under the Second Hand Store provisions of said ordinance, is valid, and asserts that said provisions are an unconstitutional prior restraint upon the free exercise of religion and religious activites, and are unreasonable and burdensome even as applied to a business "well calculated to be infected with fraud, dishonesty and probable criminality." (Second Hand Stores and Pawn Shops.) (Res. Rep. Br. p. 17.)

To sustain this proposition *In re Darte* and *Murdock* v. *Pennsylvania*, both *supra*, are relied upon. (Res. Br. pp. 23-25, 42-44.)

Throughout said reply brief reliance is placed upon *In re Darte, supra*. It shows that said decision concerned an ordinance of the City of Los Angeles similar to Ordinance No. 77,000; that the Salvation Army maintained stores like plaintiff's, which Darte supervised; that the *Darte* decision denounced the ordinance involved as "unreasonable, arbitrary, oppressive, discriminatory" and "an abortive attempt to license the exercise of a right to use that which every citizen is awarded as a privilege by the Constitution," reference being to soliciting charities; that provisions as to the regulation of charities, similar to those involved herein, were "endless and needless red tape," (Res. Rep. Br. pp. 23-32); that the grant of power to make exceptions for the favored "approved" list was discriminatory and void; that a provision giving a commission power to fix a standard of efficiency and to insure the public in the wise use of funds in "religio-charitable activities"

cannot be maintained "against the constitutional right" of the citizens "to devote their lives to charitable work." (Res. Rep. Br. p. 35-41.)

Said reply brief attacks, as violative of the right of freedom of religion, and unwarranted prior restraints upon its exercise, all of the sections of ordinance No. 77,000 which defendants' brief classed as "regulatory" and creating a registration system, to-wit, provisions for the Notice of Intention, the issuance of Information Cards, for investigation by the Board and the Department, receipts to be given by solicitors, rendering reports and keeping and filing accounts, fees for permission to solicit and filing of bonds. (Res. Rep. Br. pp. 44-49.) And said brief cites and quotes *In re Darte, Cantwell* v. *Connecticut, Murdock* v. *Pennsylvania,* all *supra,* and *Near* v. *Minnesota ex rel. Olson,* 283 U. S. 697, and other decisions in support of said contention.

Said reply brief assails as a denial of the equal protection of the laws and unreasonable discrimination, the definition of the term "promoter" in Section 44.01 of said ordinance and provisions of Section 44.18 which imposes upon promoter-solicitors far greater burdens and restraints than are elsewhere placed upon ordinary "solicitors," some of which are that the promoter-solicitor must apply for a license, pay a $25.00 license fee, post a $2,000.00 bond, hold the license subject to the condition that it may be revoked at any time if the "Board finds that any act or omission of the promoter or his agents" in soliciting has been unfair, unjust, inequitable or fraudulent." (Res. Rep. Br. pp. 39-43.)

Also, it is pointed out that said section 44.18 violates the same constitutional guarantees by providing "that no person who is a bona fide paid officer or employee of a social service agency endorsed by the Board of Social Service Commissioners, shall be considered a promoter within the meaning of this Article" (Res. Rep. Br. p. 4).

It is further pointed out that these provisions are discriminatory and arbitrarily so against, and deny the equal protection of laws to, the association which employs such promoter-solicitor and who is not endorsed by said commission (Res. Rep. Br. p. 41).

Said reply brief quotes from the decision in *Murdock* v. *Pennsylvania, supra*, as follows:

> "The cases present a single issue—the constitutionality of an ordinance which as construed and applied requires colporteurs to pay a license tax as a condition to the pursuit of their activities • • •
>
> "But the mere fact that the religious literature is 'sold' by itinerant preachers rather than 'donated' does not transform evangelism into a commercial enterprise • • •
>
> "It is plain that a religious organization needs funds to remain a going concern • • • But an itinerant evangelist • • • does not become a mere book agent by selling the bible or religious tracts to help *defray his expenses or to sustain him* • • •
>
> "Those who can deprive religious groups of their colporteurs can take from them a part of the vital power of the press which has survived from the reformation • • •
>
> "It restrains *in advance* those constitution liberties of press and religion and inevitably tends to suppress their exercise. That is almost uniformly recognized as the inherent vice and evil of this flat license tax. • • • A person cannot be compelled 'to purchase, through a *license fee* or a license tax, the privilege freely granted by the constitution.'
>
> "If we picture an itinerant preacher under compulsion to comply with Ordinance 77,000 it is obvious that he would become a permanent citizen and a qualified voter before the restraints *in advance* would be removed, but few itinerant preachers or solicitors could pay a $25 license fee and pay for a $2,000 bond for a few days solicitation to support his preaching activities in city after city throughout the country. The proposi-

tion is preposterous to describe this license or permit fee as 'nominal' and 'regulatory.' The Murdock opinion forbids. Anent the itinerant preacher, it says:

" 'Itinerant evangelists moving throughout a State or from state to state would feel immediately the cumulative effect of such ordinances as they become fashionable.' " (Emphasis added.)

Said brief also claims that "the Cantwell decision holds that although Cantwell was selling books as well as attempting to persuade listeners to contribute money for his religious cause the city had not the right to say that his acts were not done in the exercise of religion" (Res. Rep. Br. p. 47).

Said reply brief shows that the fees required by the Pawn Brokers, Second Hand Dealers Section of said ordinance are flat, substantial licenses taxes, being $50.00 for a special license and $25.00 for each renewal (Res. Br. p. 17).

Plaintiff's said brief contends that its property rights are involved in this case; that its property right in said store and the means thereby afforded to provide funds to be used in furtherance of its religious activities are violated in contravention of the Fourteenth Amendment, and points out that the trial Court so found (Res. Br. p. 31).

Plaintiff's brief cites and quotes from the reporter's transcript the testimony of witnesses given at the trial and contends that such evidence shows that the store has been carried on as a religious activity; that the solicitors who collect donations of personal property to be disposed of in said store distribute religious tracts and testaments as they go about; that the money received from the sale of such goods had been turned over to the church treasury to carry on its religious work and was so used; that the Army does missionary work, gives temporary aid to the needy, food, lodging, clothes and carfare; that if it was shown that

of donated money the Army receives 70% for its treasury and general religious work. Also, from the testimony of the defendants' witnesses said brief points out that the defendants had classed Mrs. Colbert, who conducts said store for plaintiff, as a "promoter" and had demanded that a promoter's license be secured for her; that defendants had demanded the posting of a $2,000 security bond for or by her and a license fee of $25.00 be paid; that defendants, through their officers, had asserted that "the Board claims the right to refuse" to issue a license to a promoter and to refuse an Information Card to a solicitor after a Notice of Intention is filed, and that said officials construe the term "Notice of Intention" as meaning "application for a permit" and the term "Information Card" as meaning "license" (Respondent's (plaintiff's) Reply Br. pp. 7, 10, 32, 49).

Defendants' opening brief sets forth the substance of the evidence from the reporter's transcript of the trial (App. Op. Br. pp. 5-13), and from such evidence argues that the testimony of Mrs. Colbert, plaintiff's employee who sells salvaged articles in plaintiff's store, shows that she had the donated clothing disinfected, which it is said, indicates that a certain provision of the ordinance relating to secondhand stores should apply to plaintiff's store (App. Op. Br. p. 36); otherwise appellants' brief does not discuss the evidence.

Defendants' reply brief continued to urge that Ordinance No. 77,000 is regulatory only, and that it "does not attempt to do more than *regulate* charitable solicitations when not made for 'purely religious purposes'" (App. Rep. Br. p. 2).

It quotes decisions not previously mentioned to show that "a large discretion" is vested in the Legislature in "the exercise of the police power." It cites "the recent decisions of the United States Supreme Court in the "Je-

hovah's Witnesses" cases (App. Rep. Br. p. 3). It quotes McQuillin on Municipal Corporations in an attempt to show that the fees for Information Cards and the license "fee" required of the promoter by the instant ordinance being, as it is claimed, for regulation and not for revenue, are within the purview of the police power, and other authorities are cited to that point (App. Rep. Br. pp. 4, 5).

Said closing brief cites (but does not quote) Section 215 of the City Charter as giving the Board "further authority" to enforce the police power of the city in regard to charity solicitations."

Defendants argue that the City of Los Angeles has power to license "particular branches of business" (App. Rep. Br. p. 5); that if plaintiff's store must be regarded as a religious activity, a religious organization might "run banks, secondhand stores, pool halls, cafes, or bars • • • and under the guise of religion claim to be free of regulation," and the brief declares: "We say that this is not the law and never has been" (App. Rep. Br. p. 9).

And said brief concludes by quoting portions of Section 44.18 of the instant ordinance and arguing that there is "necessity of public regulation of charitable solicitations when it is not made entirely for religious purposes but contemplates the payment of a percentage or commission to its agents," and said brief insists that, therefore, the provisions which plaintiff's brief calls prohibited prior restraints upon the exercise of religious liberty, are valid and necessary to protect the public "from fraudulent solicitations for charitable or religious purposes" (App. Rep. Br. p. 11).

The contentions thus presented were broadly considered in the opinion and decision of the Court of last resort, the State Supreme Court, which opinion is reported in 27 advance California Reports at page 246.

Seven Justices, a Chief Justice and six associate Justices, constitute said Supreme Court. The Court opinion was written by Mr. Justice Traynor and is concurred in by Chief Justice Gibson and two associate Justices.

A dissenting opinion by Justice Carter, Justice Schauer concurring, and Justice Edmonds, was also filed.

These opinions are appended to this Statement. No earlier opinions were rendered in this case.

The decision and opinion of the Supreme Court sustains the constitutionality of the ordinance involved against all attacks by the respondent Gospel Army.

Said opinion and decision holds that charitable activities of a religious organization may be severed by statutory enactment from the purely religious activities thereof, although their integration is such that the charitable activities thereof are in furtherance of the purely religious.

In that behalf the opinion reads:

> "Many activities prompted by religious motives can hardly be differentiated from secular activities. If the applicability of government regulation turned on the religious motivation of activities, plausible activities would multiply and in the end vitiate any regulation. 'Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses. * * * Where a restriction of the use of highways * * * is designed to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection. One would not be justified in ignoring the familiar red traffic light because he thought it his religious duty to disobey the municipal command or sought by that means to direct public attention to an announcement of his opinions.' (Cox v. New Hampshire, 312 U. S. 569, 574.) In Prince v. Massa-

chusetts, 321 U. S. 158, it was contended that religious liberty was abridged by the application of a statute regulating child labor to a guardian who permitted her minor ward to distribute religious literature on the streets at night. In vindicating the state's power to regulate in this way the dissemination of religious, the court declared: 'The parent's conflict with the state over control of the child and his training is serious enough when only secular matters are concerned.' * * *

"The very worthiness of such purposes creates a risk that the charitable impulses of people may be taken advantage of by solictors who would collect funds under false pretenses or retain for themselves an undue percentage of what they collected. Fraud in the solicitation of charitable contributions can be most effectively controlled by measures such as the regulation in question requiring the presentation of information to enable the public to determine the nature and worthiness of the purpose for which the solicitation is made, and requiring proof of the good character and reputation of paid solicitors. * * *

"The ordinance involved in the present case specifically exempts solicitations for religious purposes only; its object is to regulate all solicitations for charitable purposes" (27 A. C. 258, 262).

Again the opinion states:

"The trial court erroneously concluded that because plaintiff solicits funds for charitable purposes as part of its religious program its solicitations are solely for religious purposes within the meaning of the ordinance. * * * The ordinance specifically differentiates charitable and religious purposes. No person may solicit 'any contribution for any charitable purpose' without complying with the requirement of the ordinance. * * * The intention to maintain a sharp differentiation between charitable and religious purposes is apparent. * * * The solicitation of funds to provide food, shelter, and clothing for

those in distress is clearly for a charitable purpose and is therefore regulated by the ordinance" (27 A. C. p. 263).

Thus the decision upholds this differentiation, approves thereof, and decides that it does not violate the plaintiff's right to freedom of religion or the exercise thereof as guaranteed by the Fourteenth Amendment.

The foregoing language of said opinion also indicates that the justification for said segregation and the regulation of religious charities is the public welfare in protecting the people from possible fraud, and to that effect the opinion quotes with approval from *Thomas* v. *Collins* U. S., 65 Sup. Ct. 315, as follows: "The modern state owes and attempts to perform a duty to protect the public from those who seek for one purpose or another to obtain its money. When one does so through the practice of a calling, the state may have an interest in shielding the public against the untrustworthy, the incompetent, or irresponsible, or against unauthorized representation of agency" (27 A. C. p. 261).

Segregation of charitable activities from religion as established in said ordinance being thus sustained, in considering attacks upon the constitutionality of the individual sections, the opinion evaluates them as regulations of charitable associations and solicitors for charity only, and as being freed from all limitations which would otherwise demand consideration as restraints upon religious freedom.

The sections so judged are 44.01 to 44.19 of said ordinance (excluding the Second Hand Dealers subdivision of 44.19). The opinion declares: "We find nothing unduly burdensome or unreasonable in any of these provisions (27 A. C. p. 250).

The opinion quotes, cites, or cursorily describes in the text the many sections pertinent to the issues involved.

Said decision and opinion then upholds the constitutionality of provisions of said ordinance which were challenged by the Gospel Army's brief on grounds of arbitrary discrimination and lack of standards for the guidance of the city officials in the exercise of powers, in the following language: "In our opinion the classifications effected by this ordinance and the standards provided are adequate." (27 A. C. p. 255.)

Aside from the foregoing generalizations the opinion and decision of the State Supreme Court takes notice of certain of the ordinance provisions concerning the class of solicitor defined by the ordinance as "promoters." (27 A. C. pp. 253-256.) Concerning them and some other sections of the ordinance the opinion reads: "In our opinion the classifications effected by this ordinance is reasonable and the standards are adequate." (27 A. C. p. 255.) Later the opinion singles out two provisions applicable to promoters, and upholds them. It is said:

> "The requirement that promoters and the solicitors working under them submit proof of their good character and reputation does not discriminate against plaintiff or other religious organizations or censor their religious beliefs, nor does the regulation vest arbitrary power in the administrative board in authorizing it to withhold a license if it is not satisfied that the applicant is of good character and reputation. Such a requirement is common in statutes regulating admission to professions and occupations involving duties of a fiduciary character. (27 A. C. p. 262) * * *.
>
> "The license fee is a reasonable one, covering the expenses of investigations and adminstration.
>
> "The board has no discretion to withhold a license if the applicant's good character and reputation and

his financial responsibility are established and the required bond is filed. The board is not free to deny licenses, but must act reasonably in the light of the evidence presented. (27 A. C. p. 262.)

"The provision empowering the board to revoke a license in case of unfair, unjust, inequitable or fraudulent practices of solicitation is neither vague nor uncertain and affords no possibility for the censorship of religious beliefs." (27 A. C. p. 263.)

The first question decided in said opinion pertains to the subdivision of Section 44.19 of the ordinance involved which is numbered 24.01 and deals with "Pawn Brokers, Second Hand Dealers and Junk Dealers." Substantially all of the pertinent provisions of this section are enumerated, among which as set forth in the opinion are the following:

"Section 24.01 of the Los Angeles Municipal Code defines a 'junk dealer' as 'a person having a fixed place of business in this City who goes from house to house or from place to place, gathering, collecting, buying, selling or otherwise dealing in any old rags, sacks, bottles, cans, paper, metal or other articles commonly known as junk.' A 'secondhand dealer' is 'a person engaging in, conducting, managing, or carrying on the business of buying, selling or otherwise dealing in secondhand goods, wares or merchandise.' Junk dealers and secondhand dealers must obtain a permit to engage in business from defendant City's Board of Police Commissioners. The following 'Requisites of Permits' are set forth in subsection (c) of Section 24.01: '(1) Persons desiring to obtain a permit to conduct, manage or deal in any business mentioned in subsection 'a' of this Section shall file an application in writing with the Board specifying by street and number the place where such business is proposed to be conducted or carried on; junk collectors having no fixed place of business shall specify in such application their residence by street number. The application shall be

signed by the applicant and shall contain his residence address. (2) Before receiving an application for any permit the Board shall require the payment of such fees as are hereafter specified. (3) Upon receipt of such application the Board shall cause to be investigated the business of the applicant and the location at which applicant proposes to engage in business as specified in said application. Thereafter the Board may issue a permit to the applicant which shall be effective for the remaining portion of the current year. * * * (27 A. C. p. 248.)

"The fees prescribed are set forth in subsection (d): '(1) Applications for permits other than provided for in this subsection shall pay the sum provided in Section 22.10: (2) Application for special permits, the sum of $50.00; (3) Applications for annual permit renewal, the sum of $25.00; * * *

"Holders of permits must keep a complete record of all goods purchased or received by them, which is open to inspection by any member of the police department. They must also file with the Chief of Police daily reports on prescribed forms of the goods purchased or received during the preceding day, describing the article and specifying the hour of the day when it was acquired, the name and address of the party from whom it was acquired, the height, age, sex, complexion, and other characteristics of that person. The hours of business are prescribed. Secondhand dealers must keep the articles received by them 21 days before selling them. The period prescribed for junk dealers is 3 days" (27 A. C., pp. 249-250).

The opinion decides as follows:

"The foregoing provisions are reasonable, and the standards prescribed are adequate" (27 A. C., p. 250).

It is further said:

"Regulation of the business of junk dealers and secondhand dealers is designed to protect the public interest by preventing such dealers from becoming out-

lets for stolen goods. No question arises as to the constitutionality of such regulation when the business regulated is not carried on by a religious organization.

• • •

"Business carried on by a religious organization cannot be differentiated, for the reasons set forth below with respect to the validity of the regulation of plaintiff's solicitation of funds for charity" (27 A. C., pp. 250, 251).

Thus the opinion indicates that the basis for upholding the constitutionality of the foregoing provisions as applicable to religious organizations and to the Gospel Army is the Court's holding, later in the opinion, that in segregating charitable activities which are in furtherance of purely religious activities of a religious organization from religion and those activities which are solely religious, the instant Charities and Relief Ordinance does not offend the right of freedom of religion or its exercise, and, hence, that no question of inhibited prior restraints on such right can arise in this case.

In the light of the dissenting opinions written by Justices Carter and Edmonds the substantial issues decided are clearly revealed.

Justice Carter fills eleven pages with analysis of Sections 44.01 to 44.19 inclusive whose validity is the subject of dispute in the briefs (27 A. C., pp. 272-284). He discusses them not only from his viewpoint that the charities of a religious organization cannot be segregated from its religion and religious activities, but also on the basis of their application to charities as secular, and concludes that as regulations of "religio-charities" nearly all of the provisions of said ordinance create inhibited prior restraints upon plaintiff's right of fredom of religion and its exercise, and that, as regulations of charity and relief, as a business, many are void, as arbitrary and unreasonable, vague and

indefinite as to standards, or violative of the equal protection of laws guaranteed by the Fourteenth Amendment, because of unreasonable discrimination.

The dissenting opinion of Justice Edmonds follows the same pattern as to substance, as that written by Justice Carter and concurred in by Justice Schauer. He points out additional provisions which, he argues, are arbitrarily discriminatory, and others which he purports to show are violative of plaintiff's right to the free exercise of religious freedom.

Both dissenting opinions approve and rely largely upon *In re Darte*, 172 Cal. 47, and also *Cantwell* v. *Connecticut*, 310 U. S. 296, L. Ed. 1219, and *Murdock* v. *Pennsylvania*, 319 U. S. 105, 87 L. Ed. 1292.

Justice Edmonds discusses Section 24.01 of said ordinance (it being a portion of Section 44.19), and says:

> "Turning to the other provision of the Los Angeles Municipal Code which is in controversy, although generally speaking, the business activities of a religious organization come within the scope of regulations tending to protect the morals, safety or general welfare of the public, section 24.01 relating to dealers in second-hand goods is also unconstitutional for the reason that it sets no standard to which an applicant for a license must conform. To carry on the business of a 'second-hand dealer,' one must file an application in writing with the Board (of Police Commissioners) specifying by street and number the place where such proposed business is proposed to be conducted or carried on; • • • The application shall be signed by the applicant and shall contain his residence address. Upon receipt of such application the board shall cause to be investigated the business of the applicant and location at which applicant proposes to engage in business as specified in said application. Thereafter the board may issue a permit to the applicant which shall be effective for the remaining portion of the current year.'

"This enactment states no grounds justifying a denial of the application, specifies no time within which an investigation must be made, makes no provision for hearing upon the application, and by the use of the word 'may,' impliedly allows the board to grant or withhold official favor for any reason which whim or fancy may dictate. No standard of character or business responsibility is set for the guidance of the board nor are there any qualifications specified for one desiring to deal in secondhand goods. Such legislation has uniformly been held not to measure up to the requirements of constitutional guarantees. (*In re Dart, supra; Hewitt* v. *State Board of Medical Examiners, supra; Schaezlein* v. *Cabaniss, supra; County of Los Angeles* v. *Hollywood Cemetery Assn., supra; Ex parte Sing Lee, supra; Yick Wo* v. *Hopkins, supra; Hoyt Bros., Inc.* v. *Grand Rapids, supra.*)

"Under these circumstances, in my opinion, as the right of the Gospel Army and those acting in its behalf to solicit contributions for either religious or charitable purposes is a property right, the unlawful interference with which will cause irreparable injury, the trial court properly enjoined the enforcement of the ordinances here challenged (*Brock* v. *Superior Court,* 12 Cal. 2d 605 (86 P. 2d 805); *Bueneman* v. *City of Santa Barbara,* 8 Cal. 2d 405 (65 P. 2d 884, 109 A. L. R. 895), and the judgment should be affirmed" (27 A. C., pp. 298, 299).

Replying to the principal alleged justification given in the majority opinion for nearly all of the regulations contained in the ordinance and the plan and system established by it, to-wit, the prevention of fraud and safeguarding the public from deception upon the part of charitable and religious organizations and their solicitors and promoters, Mr. Justice Carter quotes from *Cantwell* v. *Connecticut,* 310 U. S. 296, and *Schneider* v. *Irvington,* 308 U. S. 161, and states:

"That some fraud may escape detection is to be anticipated. This is more or less true in all walks of life

despite volumes of protective legislation. But the diversion to wrongful channels of some part of the public contribution to charity is not a major catastrophe when weighed against the cost of protection effected only by carving a large slice from the bill of rights. Indeed it may be asked whether any community can afford to undertake a regulatory program which may largely deprive the public of the opportunity to hear and respond to pleas of other than organized and municipally approved charities, thus stifling the growth and character development gained by the exercise of pity, compassion, and generosity. Small are the sums contributed by the average community to charity when compared with the large amounts customarily spent for luxuries and entertainment. In one sense the benefit of the opportunity to give where the right hand knows not what the left hand is doing is of more intrinsic value than the actual raising of the money, for all are in need of the spiritual enrichment which comes of free will offering. There are few housewives who will not cheerfully give from their larder to ten itinerant mendicants rather than run the risk of turning away hungry one man worthy of alms. • • •

"All of this has been given recognition in the decisions of the United States Supreme Court. In the Cantwell case it is said at pages 308 and 310, 'But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy. The essential characteristic of these liberties is, that under their shield many types of life, character, opinion and belief can develop unmolested and unobstructed. Nowhere is this shield more necessary than in our own country for a people composed of many races and of many creeds. • • •

"*Equally obvious is it that a state may not unduly suppress free comunication of views, religious or other, under the guise of conserving desirable conditions.* Here we have a situation analogous to a conviction un-

der a statute sweeping in a great variety of conduct under a general and indefinite characterization, and leaving to the executive and judicial branches too wide a discretion in its application." (Italics ours.)

"Again it is said in the Schneider case at page 164: 'Conceding that fraudulent appeals may be made in the name of charity and religion, we hold a municipality cannot, for this reason, require all who wish to disseminate ideas to present them first to police authorities for their consideration and approval, with a discretion in the police to say some ideas may, while others may not, be carried to the homes of citizens; some persons may, while others may not disseminate information from house to house. Frauds may be denounced as offenses and punished by law. Trespasses may similarly be forbidden. If it is said that these means are less efficient and convenient than bestowal of power on police authorities to decide what information may be disseminated from house to house, and who may impart the information, the answer is that considerations of this sort do not empower a municipality to abridge freedom of speech and press.' The same is true with respect to abridgment of the right of religious freedom" (27 A. C., pp. 267-268).

At another point the dissent of Justice Edmonds refers to the statement in the opinion of the Court that the Department of Social Service issues Information Cards (permits to solicit) automatically after a Notice of Intention is filed, and he answers, that the Information Card "is not issued as a matter of course upon filing of the Notice of Intention" (27 A. C., p. 292).

Thereafter, and within the time allowed by law and rules of the State Supreme Court, plaintiff petitioned said court for rehearing of said appeal, and in said petition claimed that the opinion and decision rendered, as above set forth, erred in holding said ordinance, and each of its provisions, valid, and not violative of the Fourteenth

Amendment to the Constitution of the United States, or either clause thereof, and not in any respect infringing the right of freedom of religion or the right to exercise it by Gospel Army in particular, and not an impairment of the religious or charitable organizations generally, or the property rights of plaintiff as guaranteed by said Fourteenth Amendment.

In said petition (p. 2) it was claimed that "in upholding and enforcing the unconstitutional provisions the instant decision, itself, violates said constitutional rights and contravenes said clauses."

Said petition points out the "formula" of determining cases on appeal wherein the rights of freedom of the press or of religion conflict with other constitutional rights, as announced in *Schneider* v. *Irvington*, 308 U. S. 147, and asserts that said opinion in this case fails to follow and conflicts with said formula rule.

It claims that Justice Carter's dissenting opinion follows said formula rule and that both dissenting opinions demonstrate, section by section, that each of the sections of said ordinance dealing with solicitors, promoters and organizations for which they solicit, contains provisions which constitute prior restraints, upon the exercise of the right of religious freedom as applied to any religious organization which solicits and dispenses donations for charity, as well as when applied to the right to dispense charity, and said petition claims that said State Supreme Court erred in holding to the contrary.

Said petition (pp. 13, 14) analyzes the decision in *In re Darte*, 172 Cal. 47, and claims that it is decisive of every legal proposition presented in the instant case and thereby upholds plaintiff's contentions as set forth in its brief on appeal, and that said opinion and decision of said State Supreme Court erred in refusing to follow the decision in the *Darte* proceeding in deciding each issue thus presented.

Said petition (pp. 12, 13) claims that said opinion and decision herein erred in failing to consider the testimony of the defendants' witnesses showing that as construed and applied by defendants said ordinance authorizes said Department and Board to deny applications by persons for permits to solicit and for licenses to solicit, and of charitable organizations for such permits and licenses in their discretion and regardless of full compliance with all applicable provisions of said ordinance, quoting *Cantwell* v. *Connecticut*, 310 U. S. 296, *Yick Wo* v. *Hopkins*, 118 U. S. 356, and *Brock* v. *Superior Court*, 12 Cal. (2d) 603.

Said petition for rehearing (p. ——) especially criticizes the opinion and decision of said Supreme Court herein in upholding the provisions of the Second Hand and Junk Dealers section of said ordinance as against all attacks thereon in plaintiff's brief on appeal, by which it was contended that such provisions and the whole thereof are violative of the due process clause of the Fourteenth Amendment to the Federal Constitution and constitute prior restraints upon the exercise of the right of freedom of religion and to dispense charities and thereby infringe such rights of the Gospel Army and of its solicitors and promoters, and that certain of said provisions violate the equal protection of the laws clause of said Fourteenth Amendment, and that certain of them are void under the same amendment as delegations of powers without providing standards for their exercise, or as so vague and indefinite as to be incapable of enforcement and permitting the capricious, arbitrary enforcement thereof based upon prejudice or favoritism.

The following are excerpts and portions of said petition for rehearing, set forth therein as exhibiting error in said opinion and decision of said State Court of last resort:

> "Justice Carter's dissenting opinion points out the unwarranted character of the Board's rule which pro-

vides that the Department shall determine whether an organization is soliciting for charity or for religion and that to entitle a religious organization to solicit for charity 50% of the amount collected must go to charitable purposes, otherwise no permit will be given to the organization and no license will be sold to the 'promoters.'" (Petition p. 4.)

"Quoting from *Cantwell* v. *Connecticut*, 310 U. S. 296, and *Matter of Dart*, 172 Cal. 47, both dissenting opinions convincingly demonstrate that charity is an integral part of religion as preached and practiced by the true followers of Jesus and of the Jewish faith and that such integration is not subject to severance into two segments, one of religious activities and the other of secular affairs. However, the dissenting opinions point out that this Court's decision 'does just that' and fails to justify its action by any relevant or applicable authority." (Petition pp. 4, 5.)

"Perhaps the most outstanding inadequacy of the Court's opinion herein appears from the careful and seemingly unanswerable analysis of the pivotal provisions of the Charities and Relief Ordinance in the dissenting opinions which expose violation after violation of the guarantees of the Fourteenth Amendment and of respondent's right to exercise freedom of religion, as contrasted with an entire absence of such analysis in the Court opinion, and its mere recital in the footnotes of those provisions whose patent vices are waived aside by the Court's 'generalizations': 'In our opinion the classifications effected by this Ordinance is reasonable and the standards provided are adequate,' and, 'We find nothing burdensome or unreasonable in any of these provisions.' (Op. p. 15, lines 7-8.)" (Petition p. 5.)

"This Court's decision, viewed in the light of the dissenting opinions, is obviously inadequate in its approval and judgment of terms employed in said Ordinance purporting to fix standards for officers to follow in administering its provisions, such as that in Section 44.19, that 'if satisfied' that the applicant is of 'good

character and reputation' the officials may grant a promoter a license.

"Another example is the provision in Section 44.03 pertaining to the contents of the information card which authorizes the Board to insert therein anything which, 'in the opinion of the Board' may be of assistance to the public to determine 'the nature and worthiness' of the purpose of the solicitation.

"Since these and other provisions of the same type give administrative officials unlimited power to hamper or to render wholly ineffective the promoter's solicitations and, also, to indefinitely delay or even deny the issuance of licenses, permits and information cards, the absent treatment accorded them in the majority opinion renders its bald conclusions upholding them arbitrary and apparently unreasonable." (Petition pp. 5, 6.)

"To provide a legal foundation for the blanket approval in the opinion of this Court of the many burdensome, prohibitive, standardless and unreasonable provisions of said Ordinance, numerous decisions from many jurisdictions are cited to sustain the proposition that activities characteristic of the secular life are subject to regulation, even though they are carried on in the name of religion.

"Justice Edmonds points out that none of said cases are in point; that only two concern the solicitation of funds or goods, one of which pertained to the activities of minors, only, and the other does not pass upon any question herein involved. Justice Edmonds also shows that the decisions relied upon in the majority opinion to sustain its holding that a promoter may be required to 'submit proof of his good character and reputation' have no proper application to solicitation for charity, and that the section of the instant Ordinance in question cannot be reconciled with the language in *Cantwell* v. *Connecticut*, supra, which limits prior restraints in such cases so that they will not bar the activities of the mendicant preacher or the traveling colporteur.

"Also, that the requirement that the promoter or solicitor must satisfy the Board that he is 'equal to

the financial responsibility incident to the proposed solicitation' has not been harmonized with the *Cantwell* decision.

"The majority opinion makes no attempt to reconcile the numerous prior restraints on solicitation for religion or charities with the limitation placed thereon by the United States Supreme Court, although the dissenting opinion clearly points out that such limitation forbids more than identification and registration requirements, and show by elucidation of individual sections that the instant the Charities and Relief Ordinance is filled with unconstitutional prior restraints." (Petition pp. 6, 7.)

"The majority opinion errs in holding that, as a matter of law, the donations procured by respondent's solicitors and promoters were and are charitable and not religious. It thus ignores the findings of the trial court which have not been challenged by appellant and therefore are unimpeachable.

"The decision of this Court glosses over the vague and indefinite terms with which said Ordinance abounds, no doubt unintentionally, using the generalities herein-before mentioned by which it is said 'we find nothing unduly burdensome or unreasonable in any of those provisions' and 'in our opinion the classification affected by this Ordinance is reasonable and the standards provided are adequate.'

"Yet, the dissenting opinions show many instances of heavily onerous requirements; for example, Justice Carter points out that under Section 44.05 one who would solicit for charity, must file a written notice of intention containing complete information on 'eleven comprehensive phases' of the undertaking, which would require a very liberal educational background to supply such statistics, and the mere enumeration of these information demands shows that the jurist's assertion, 'the much maligned income tax forms * * * are no more complex and demanding than is this notice of intention in its requirements of itemized data,' is entirely true.

"Both dissenting opinions, demonstrate by quoting Ordinance sections and pointing out their consequences, that endless delays are authorized and prohibitive labor and expensive booking systems are required of both solicitor and the charitable association for whom donations are to be sought.

"But the Court's opinion brushes aside similar elucidations of said sections in respondent's brief upon a most optimistic and trusting theory, to-wit, that this Court cannot assume that it (the department) will abuse its authority. This doctrinaire overlooks long settled law, which is:

"*The question of the Constitutionality of an Act is to be determined not by what has been done under it, but by what may be done under, and by virtue of its authority.* (6 R. C. L., p. 82; *In re Lambert,* 134 Cal. 626, 86 A. S. R. 296, 55 L. R. A. 856); Yicky *v.* Hopkins, 118 U. S. 374.)" (Petition pp. 8, 9.)

"The decision of this Court which upholds the regulation of respondent's store under the Ordinance section 24.01, relating to second-hand dealers is shown by Justice Edmonds to be unconstitutional because it establishes 'no standard of character or business responsibility' to guide the Board and no 'qualifications are specified for one desiring to deal in second-hand goods,' and it authorizes 'the Board to grant or withhold official favor for any reason which whim or fancy may dictate.'

"Mere reading of said section can leave no doubt of the soundness of the above quoted assertions, and the cases cited by Justice Edmonds establish that such an enactment flagrantly infringes the 14th Amendment to the Federal Constition and both clauses thereof.

"Also, respondent's brief (pp. 17, 18) points out that the pawnbrokers, second-hand dealers ordinance contravenes the 14th Amendment to the Federal Constitution, because the regulations are unnecessarily burdensome, especially as applied to activities which are carried on as an incident to the exercise of religion or by charitable organizations.

"Reliance has been placed upon *In re Dart*, 172 Cal. 47, to which respondent still adheres because that decision is fully supported by decisions of the United States Supreme Court, to-wit: *Cantwell* v. *Connecticut*, *Murdock* v. *Pennsylvania*, both *supra*, and *Schneider* v. *Irving*, 308 U. S. 147." (Petition pp. 9, 10.)

"The Instant Opinion and Decision, Itself, Violates the 14th Amendment to the Federal Constitution

"It violates said 14th Amendment in that it approves, confirms and enforces the provisions of said Charities and Relief Ordinance concerning 'promoters' who solicit goods for church stores or sell the same (the proceeds from which sales are used exclusively in furtherance of the religious activities of churches), which provisions require promoters to apply for a license, provide a $2,000 bond, furnish much irrelevant data about themselves and the religious organization which they represent as specified in the ordinance, and endless data which the Board may require from time to time; pay for an investigation of themselves by the Board; wait a period without limit for the Board to act, and if and when, a license is granted, to solicit under handicaps which would necessarily render their efforts ineffective and so expensive that no profits could be left from any goods donated if the promoter were paid a living wage—all of which is pointed out in the dissenting opinions herein.

"It denies to respondent the equal protection of the laws in that it approves, confirms and enforces the provisions of said Charities and Relief Ordinance by which the Board of Social Service Commissioners is authorized to arbitrarily, capriciously and partially grant rights and privileges to its favorites among the Social Service Agencies of Los Angeles and to deny such rights and privileges to other organizations of the same class, including respondent, as has been pointed out under caption I herein (Petition pp. 16, 17).

"It violates said Fourteenth Amendment because it approves as legal and enforces provisions of the Charities and Relief Ordinance concerning 'solicitors' which

are equally burdensome, oppressive and arbitrary with those regulating 'promoters,' and are similar to such promoter provisions, except that, no bond is required of solicitors and the fee for a permit is less—all of which the instant dissenting opinions, as well as respondent's reply brief herein show.

"It approves provisions of said Charities and Relief Ordinance which delegate to the Board and its officers power to refuse the issuance of an information card to promoters and permits to solicitors for religious organizations for their religio-charities and to base such refusal upon the Board's own investigation and without a hearing." (Petition p. 17).

"To make its own determination as to whether solicitations are for charity or for religion, and said Ordinance provides that unless donations are collected exclusively for religious purposes they are subject to regulation as charity, all of which this Court has approved." (Petition pp. 17, 18).

"It fails, entirely, to consider the interpretation placed upon the ordinance herein involved by the Board and its officers which administer it, under which interpretation said ordinance gives such Board full authority to arbitrarily refuse to issue an information card to any religious organization or to issue a license to its promoters or a permit to its solicitors, and in these and other respects (pointed out in respondent's brief), said Board has construed and applied said ordinances so as to render them violative of respondent's rights of freedom of religion and the due process clause of the Fourteenth Amendment; overlooking and failing to consider the foregoing interpretation and application of said Ordinance the instant decision, itself, denies to respondent the equal protection of the laws and deprives respondent of property rights and the right of religious liberty without due process of law.

"Upon all and each of the foregoing grounds respondent requests that a rehearing of its appeal be ordered by this Court." (Petition pp. 17, 18).

Robert H. Wallis,
Counsel for Appellant.

APPENDIX TO JURISDICTIONAL STATEMENT

Opinion of the Court

TRAYNOR, J.:

Certain ordinances of the City of Los Angeles regulate transactions in secondhand goods and solicitations for charitable purposes. Plaintiff, an incorporated religious organization, brought this suit to enjoin the enforcement of these ordinances as applied to it on the ground they abridged its religious liberty in violation of the Constitution of the United States and the Constitution of California. The trial court found that plaintiff is "engaged exclusively in the promulgation, by literature and word of mouth, of its religious beliefs, by and through its auxiliaries, and in the procuring of donations in the form of money and articles of value in the prosecution and furtherance of its religious activities." It enjoined defendants from "further interference and threatened acts, which would in any way prevent the free exercise of the religious liberty and freedom of worship of the said Plaintiff." Defendants appeal.

The finding of the trial court must be viewed in the light of the evidence, which is undisputed. Religious services at plaintiff's mission are conducted by a minister ordained by it whose compensation depends entirely on solicited contributions. Plaintiff engages in missionary work, distributes the New Testament and religious tracts free to the public, and gives assistance to those in need. It collects salvage from the public to obtain funds to propagate its religious doctrines and to provide aid to the poor. Some of the salvage is sold in a secondhand goods store operated by plaintiff; some, such as clothing, is distributed to the poor; goods not suitable for further use go directly to a salvage mill. The salvage is collected by plaintiff's "industrial solicitors" in four of plaintiff's trucks. The money received from the sale of secondhand goods in plaintiff's store is used to meet the cost of operating the store, including the compensation paid to the manager and the solicitors. Whatever remains is paid into plaintiff's treasury. Ninety per cent of the money received for the mill

material goes to the drivers of the trucks; the remainder is turned over to the manager of the store for plaintiff's treasury.

Other employees of plaintiff solicit money from the public. Solicitors make the object of their mission known by showing to prospective donors a printed card stating that "the bearer whose signature is hereon attached for identification is duly authorized to solicit money, food, clothing or any other useful articles that will help the Gospel Army to carry on their religious home missionary and evangelical work among the poor and under-privileged." About fifty per cent of the funds raised is absorbed by the cost of soliciting, including the compensation of the solicitors, which is paid on a percentage basis. The funds remaining are used to pay the cost of furnishing tracts and religious literature free to the public and to supply food, lodging, clothing and car fare to the poor.

Section 24.01 of the Los Angeles Municipal Code defines a "junk dealer" as "a person having a fixed place of business in this City who goes from house to house or from place to place, gathering, collecting, buying, selling or otherwise dealing in any old rags, sacks, bottles, cans, paper, metal or other articles commonly known as "junk." A "secondhand dealer" is "a person engaging in, conducting, managing, or carrying on the business of buying, selling or otherwise dealing in secondhand goods, wares or merchandise." Junk dealers and secondhand dealers must obtain a permit to engage in business from defendant city's Board of Police Commissioners. The following "Requisites of Permits" are set forth in subsection (c) of Section 24.01: "(1) Persons desiring to obtain a permit to conduct, manage or deal in any business mentioned in subsection 'a' of this Section shall file an application in writing with the Board specifying by street and number the place where such business is proposed to be conducted or carried on; junk collectors having no fixed place of business shall specify in such application their residence by street number. The application shall be signed by the applicant and shall contain his residence address. (2) Before receiving an application for any permit the Board shall require the payment of such fees as are hereafter specified. (3) Upon re-

ceipt of such application the Board shall cause to be investigated the business of the applicant and location at which applicant proposes to engage in business as specified in said application. Thereafter the Board may issue a permit to the applicant which shall be effective for the remaining portion of the current year. (4) Persons operating under the provisions of this Section shall be required to secure an annual renewal of such permit commencing January 1st of the succeeding year in which such permit was granted. (5) No person holding a permit to conduct, manage, carry on or deal in any business mentioned in subsection 'a' of this Section shall buy, sell or otherwise deal in secondhand jewelry, precious stones, precious metals (including old gold), watches or other similar secondhand merchandise without first applying for and receiving a special permit therefor from the Board in the manner provided in this Section for securing ordinary permits." The fees prescribed are set forth in subsection (d): "(1) Applications for permits other than provided for in this subsection shall pay the sum provided in Section 22.10; (2) Applications for special permits, the sum of $50.00; (3) Applications for annual permit renewal, the sum of $25.00; (4) applications for changing location of place of business for which a permit has been granted, the sum of $10.00; (5) Change of ownership, the sum of $10.00, to be applicable only in cases where the new owner is already operating under a permit issued pursuant to provisions of this Section." Subsection (e) provides: "(1) The Board shall not grant any permit provided for in this Section to persons who fail, refuse or neglect to comply with the laws and ordinances relating to and regulating the business for which such permit is sought. (2) Persons applying for or obtaining permits under the provisions of this Section shall comply with the provisions of this Section." Subsection (f) provides for the revocation of permits: "Any permit issued under the provisions of this Section may be revoked or suspended upon the grounds provided for in this Section: (1) * * * If persons holding permits under the provisions of this Section shall violate any of the provisions of this Section or any provisions of any other ordinance or any law relating to or regulating any such business, or shall conduct or carry on

such business in an unlawful manner, the Board, in addition to any other penalties provided by this Code, shall revoke such permit issued to such person; (2) * * * Permits granted pursuant to this Section shall be revoked only in the manner provided in Section 22.02 of this Code; (3) * * * No permit shall be granted to any person to conduct, manage, carry on or deal in any business mentioned in subsection 'a' of this Section whose permit has been revoked by the Board until six (6) months have elapsed after such revocation." Holders of permits must keep a complete record of all goods purchased or received by them, which is open to inspection by any member of the police department. They must also file with the Chief of Police daily reports on prescribed forms of the goods purchased or received during the preceding day, describing the article and specifying the hour of the day when it was acquired, the name and address of the party from whom it was acquired, the height, age, sex, complexion, and other characteristics of that person. The hours of business are prescribed. Secondhand dealers must keep the articles received by them 21 days before selling them. The period prescribed for junk dealers is three days. With respect to certain articles classed as scrap, junk dealers are exempted from the provisions requiring the keeping of records, the filing of reports, and the keeping of articles for three days. There are comparable exemptions for secondhand dealers. If a claim is made that property in the hands of the holder of a permit is stolen, the board, in the event no court action is pending, may determine whether or not the property was stolen from the claimant and order its return if it was. If such an order is disobeyed, the board may revoke the permit. The foregoing provisions are reasonable, and the standards prescribed are adequate. (In re Holmes, 187 Cal. 640, 646 (203 P. 398); Co-operative Junk Co. *v.* Board of Police Commissioners, 38 Cal. App. 676, 679 (177 P. 308); Zemansky *v.* Board of Police Commissioners, 61 Cal. App. 2d 450, 453-455 (143 P. 2d 361); see 30 A. L. R. 1427; 88 A. L. R. 970, 972; 7 Cal. Jur. 10-yr. Supp. 366; 33 Am. Jur. 336-339, 355; 47 Am. Jur. 555).

Regulation of the business of junk dealers and secondhand dealers is designed to protect the public interest by

preventing such dealers from becoming outlets for stolen goods. No question arises as to the constitutionality of such regulation when the business regulated is not carried on by a religious organization. (Lewis *v.* Quinn, 217 Cal. 410, 413 (19 P. 2d 236); In re Holmes, supra; Co-operative Junk Co. *v.* Board of Police Commissioners, supra; Zemansky *v.* Board of Police Commissioners, supra; see 30 A. L. R. 1427; 88 A. L. R. 970, 972; 7 Cal. Jur. 10-yr. Supp. 366; 33 Am. Jur. 336-339, 355; 47 Am. Jur. 554). Business carried on by a religious organization cannot be differentiated, for the reasons set forth below with respect to the validity of the regulation of plaintiff's solicitation of funds for charity.

Sections 44.01 to 44.19 of the Los Angeles Municipal Code regulate solicitations of funds for charity. The term "charitable" includes "Philanthropic, social service, benevolent, patriotic, either actual or purported." The term "contribution" includes "alms, food, clothing, money, property or donations under the guise of a loan of money or property." (#44.01). Certain provisions, applicable to solicitors or charitable contributions in general, are designed primarily to secure information that will assist the public in judging the nature and worthiness of the cause for which the solicitation is made and to insure the presentation of such information to prospective donors. We find nothing unduly burdensome or unreasonable in any of these provisions. Section 44.05, which is quoted in the margin,[1]

[1] "No person shall solicit, nor shall any officers or member of any association authorize any person to solicit, any contribution for any charitable purpose unless, within the fiscal year of the City in which such solicitation is made and at least within ten (10) days prior to the beginning of such solicitation, there shall have been filed with the Department, on a form furnished by said Department, by such person or association upon whose behalf the solicitation is made, written Notice of Intention to solicit such contribution, which notice shall contain complete information as follows:

"(a) The purpose of the solicitation and use of the contribution to be solicited;

"(b) A specific statement, supported by reasons and, if available, figures, showing the need for the contribution proposed to be solicited;

"(c) The character of such solicitation and how it will be made or conducted;

requires any person who solicits for any charitable purpose to file with the Department of Social Service a notice of intention to solicit ten days before the solicitation. This notice must contain, among other things, information regarding the purpose, character, method, and estimated expenses of the solicitation, the need for the contribution to be solicited, the proposed use of the solicited funds, the amount that will remain available for charitable purposes over expenses, the amount received from solicitations in the preceding calendar year, the expenses of such solicitations, and the amount that remained available for charitable purposes. The department may investigate the statements in the notice of intention. (#44.03(a).) Information cards setting forth the facts in the notice of intention and such other facts as in the opinion of the Board of Social Service Commissioners will be of assistance to the public in determining the nature and worthiness of the solicitation (Section 44.06 quoted in the margin *) are issued by the Department of Social Services for four cents per card.

"(d) The expenses of the solicitation, including salaries and other items, if any, regardless of from what funds such expenses are payable;

"(e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the solicitation;

"(f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention. The expenditure or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commissions or emoluments from such contributions, and the respective amounts thereof;

"(g). The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made;

"(h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified to as a true and correct copy of the original of such resolution by the officer of such association having charge of the records thereof;

"(i) A statement that the signers of such Notice have read and are familiar with the provisions of this Article and will require all solicitors engaged in such solicitation to read and be familiar with all sections of this Article prior to making any such solicitation."

* "There shall be filed with the Department with such Notice of Intention a statement of any agreement made with any agent, solicitor, promoter manager or conductor of such solicitation, together with a copy of each agreement which may be in writing. Within twenty-four hours after any

(#44.03(e).) The information cards, which are in effect permits to solicit, are issued automatically upon the filing of the required information and the payment of the four cents for each card. The department is given no authority to withhold such cards when these requirements are met, and we cannot assume that it will abuse its authority in order to withhold them. As this court said in In re Holmes, 187 Cal. 640, 647 (203 P. 398), quoting from In re Flaherty, 105 Cal. 558, 562 (38 P. 981, 27 L. R. A. 529) and Gaylord *v.* City of Pasadena, 175 Cal. 433, 437 (166 P. 348): " 'Laws are not made upon the theory of the total depravity of those who are elected to administer them; and the presumption is that municipal officers will not use these small powers villainously or, for purposes of oppression or mischief.' If this petitioner had applied for a permit under the requirement of the section of the charter above quoted, and been either whimsically or arbitrarily refused such permit, he might then, as is shown in Gaylord *v.* City of Pasadena, supra, have had recourse to the courts for relief from such unjust and arbitrary action."

Each solicitor must exhibit an information card to the prospective donor and must not make any misstatements. A solicitor must also carry written authorization from the association that he represents. The board may recall the cards and amend them if it receives additional information showing that any statements thereon are incorrect. The

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change in any such agreement or the making of any new or further agreement, a true copy of such change or agreement, if in writing, or if not, written details thereof, shall be filed with the Department. Whenever, in the opinion of the Board, the Notice of Intention filed with the Department does not disclose sufficient information for the public concerning the facts hereinabove required to be stated in such Notice or concerning the person or association making such solicitation or on whose behalf such solicitation is made, then, upon the request of said Department, there shall be filed, in writing, within forty-eight (48) hours after such request, such additional information as may be required by said Board upon the foregoing subjects. Provided, however, that the Board, for good cause, may extend the time for filing such additional information. The Notice of Intention and such additional information, if requested, shall be signed by such person intending to make such solicitation, or if by or on any association, by at least two officers of such association and shall be open to the inspection of the public."

board may not disallow a proopsed solicitation but it may investigate the statements in the notice of intention and the methods of making or conducting the solicitation; it may inspect the records of the person in charge of the solicitation and the association for whom it is made, and it may give such publicity to its findings as it deems best to reach the general public and persons interested. The association for whom the solicitation is made must maintain an accounting system recording the entry of all donations and disbursements. (#44.08.)

More restrictive provisions are applicable to promoters. A promoter is "any person who for pecuniary compensation or consideration received, or to be received, solicits or is engaged in the business of or holds himself out to the public as engaged in the business of soliciting contributions for or on behalf of any other person or any charitable association, corporation or institution, or conducts, manages or science. • • • It is sufficient to show what indeed appurpose; provided, however, that pecuniary compensation or consideration as used herein, shall include, but shall not be limited to, participation on a percentage basis in any fund solicited, or raised, for or on behalf of any other person, firm, association or corporation; provided, further, that no person who is a bona fide paid officer or employee of a social service agency endorsed by the Board of Social Service Commissioners, shall be considered a promoter within the meaning of this article." (#44.01.) The conditions that a social agency must meet to be endorsed by the Social Service Commission and the standards that govern the commission are set forth in a separate ordinance, the relevant part of which is quoted in the margin.[2] In our

[2] "Sec. 2. Said Commission shall have power:

"1. To investigate, when requested or permitted, by the officers or persons in charge thereof all charitable or philanthropic corporations or associations dependent upon public appeal or general solicitations for support, and submit quarterly, in writing, the result of such investigation to the Council.

"2. To endorse such of said charitable corporations or associations as shall apply to said Commission for endorsement and prove to the Commission that they have complied with the following provisions, namely:

"(a) That the title to any real property in the City of Los Angeles owned by such charitable corporation or association is vested in the name of

opinion the classification effected by this ordinance is reasonable and the standards provided are adequate.

A promoter must apply for a promoter's license. The application must set forth the applicant's qualifications and show that he is of good character and reputation. Persons working as solicitors for compensation under the promoter must be registered as solicitors. The board grants a promoter's license if it is satisfied that the applicant is of good character and reputation, is equal to the financial responsibility incident to the proposed solicitation and intends to conduct his business as promoter fairly and honestly. Similarly, before registering a solicitor, the board must be satisfied of his good character and reputation. A license fee of $25 is required for a promoter's license. A promoter must also file a $2,000 bond with the board to insure contributors against loss through theft. Solicitors must file a $500 bond and pay a registration fee of $1.00. The board may revoke a promoter's license, after a hearing, for any "unfair, unjust, inequitable or fraudulent" act of a promoter or his employees, or agents in making a

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said charity, if it be a corporation, or else in the name or names of a responsible trustee, or trustees under a declaration of trust or other written instrument, setting forth the rights of such charitable corporation or association therein, and recorded in the records of the County Recorder of Los Angeles County.

"(b) That the declared purpose for which such a corporation or association is organized are charitable or philanthropic, and not for the pecuniary profit of the members or associates thereof or any of them.

"(c) That for three months prior to its endorsement said charitable corporation or association has faithfully complied with the following provisions with reference to its accounts, namely: All funds received by it and all disbursements made by it, have been entered upon the books of its treasurer or other financial officer, receipts have been given or tendered for all money or other property donated to it, whenever required by law or ordinance; all expenditures other than petty cash to a reasonable amount have been made by checks signed by at least two officers of such corporation or association; that the bank book of such association or corporation has been balanced and reconciled with the books of account at reasonable intervals.

"(d) That no moneys of said corporation or association are on loan directly or indirectly to any officer, director, trustee or employee thereof, and that the corporation or association for a period of three months prior to its endorsement has not invested any moneys constituting part of its permanent endowment funds except in securities legal as

solicitation or conducting the business of promoter. Any ground that would have led to denial of the license is also ground for its revocation.

Solicitations upon premises owned or occupied by the association upon whose behalf the solicitation is made, and the soliciting of funds solely from members of the soliciting association are not subject to the provisions concerning promoters and solicitors or to certain other regulatory provisions of the ordinance. "Solicitations made solely for evangelical missionary or religious purposes" are also exempted. If, however, they are conducted in such a manner as in the opinion of the board may give the persons solicited or the public the impression that the purpose of the solicitation is in whole or in part charitable, the board may investigate the matter and give such publicity to its findings as it may deem best to advise the public of the facts. (Sec. 44.16.)

Plaintiff contends that since the practice of charity and the solicitation of funds for that purpose are part of its religious duties, the ordinances regulating the solicitation of charitable contributions cannot apply to plaintiff's solicitations without abridging its religious liberty in violation of the Constitution of the United States and the Constitution of California.

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investments for savings banks within the State of California, and has not paid out more than 15% of any amounts collected by solicitation within the City of Los Angeles for expenses of solicitation, and has not diverted funds donated to it from any source to purposes other than those for which they were donated.

"Provided, however, that the provisions of this paragraph shall not apply to any loan or investment that has been made prior to the passage of this ordinance.

"(e) That the work for which such corporation or association has been organized has been faithfully performed.

"(f) That the by-laws and other written rules and regulations of such corporation or association define the powers and duties of the officers of such corporation or association, and that a copy of the Articles of Incorporation of said charity, if it be a corporation, and a copy of the By-Laws and other written rules and regulations of such corporation or association have been filed with the Social Service Commission.

"(g) That within three months prior to its endorsement such a corporation or association has not violated any law or ordinance applicable to it.

Religious liberty "embraces two concepts,—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be." (Cantwell *v.* State of Connecticut, 310 U. S. 296, 303 (60 S. Ct. 900, 84 L. Ed. 1213, 128 A. L. R. 1352.) The constitutional guarantee protects the profession of a religious belief by word of mouth or in writing, the dissemination of the doctrines of a religious organization by preaching from the pulpits or other methods of evangelism, or the right to refuse to state beliefs against the dictates of one's conscience. (Murdock *v.* Pennsylvania, 319 U. S. 105, 109 (63 S. Ct. 870, 891, 87 L. Ed. 1292, 146 A. L. R. 81); West Virginia *v.* Barnette, 319 U. S. 624, 642 (63 S. Ct. 1178, 87 L. Ed. 1628, 147 A. L. R. 674).) "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word of mouth or act their faith therein." (West Virginia *v.* Barnette, 319 U. S. 624, 642 (63 S. Ct. 1178, 87 L. Ed. 1628, 147 A. L. R. 674).) It does not follow, however, that religious organizations enjoy unlimited freedom in carrying on all activities related to their religious program. As the United States Supreme Court declared in Murdock *v.* Pennsylvania, 319 U. S. 105, 109-110 (63 S. Ct. 870, 891, 87 L. Ed. 1292, 146 A. L. R. 81): "we do not intimate or suggest * * * that any conduct can be made a religious

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"(h) That the officers and employees of such corporation or association are persons of good moral character and reputation and that the corporation or association has exercised reasonable care in selecting persons of good moral character and reasonable experience as solicitors for its funds.

"Said Commission shall issue said endorsement to any such corporation or association as shall comply with the aforesaid requirements. Said endorsement shall be valid for such time as shall be fixed by the Commission but not exceeding one year from date of its issuance.

"Said Commission shall report to the Council upon request by it the name of any corporation or association which is endorsed or has been refused endorsement by it, with a general statement of the reasons for its refusal.

"Said Commission shall also have power to request any endorsed corporation or association to make application for a new endorsement at or after the end of each fiscal year or at an earlier period if the Commission shall deem such requirement advisable, and if said corporation or association shall not do so its endorsement shall be withdrawn."

rite and by the zeal of the practitioners swept into the First Amendment. Reynolds *v.* United States, 98 U. S. 145, 161-167, 25 L. Ed. 244, and Davis *v.* Beason, 133 U. S. 333, 10 S. Ct. 299, 33 L. Ed. 637, denied any such claim to the practice of polygamy and bigamy. Other claims may well arise which deserve the same fate. We only hold that spreading one's religious beliefs or preaching the Gospel through distribution of religious literature and through personal visitations is an age-old type of evangelism with as high a claim to constitutional protection as the more orthodox type."

Many activities prompted by religious motives can hardly be differentiated from secular activities. If the applicability of government regulation turned on the religious motivation of activities, plausible motivations would multiply and in the end vitiate any regulation. "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost is the excesses of unrestrained abuses. • • • Where a restriction of the use of highways • • • is designed to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection. One would not be justified in ignoring the familiar red traffic light because he thought it his religious duty to disobey the municipal command or sought by that means to direct public attention to an announcement of his opinion," (Cox *v.* New Hampshire, 312 U. S. 569, 574 (61 S. Ct. 762, 85 L. Ed. 1049, 133 A. L. R. 1396).) In Prince *v.* Massachusetts, 321 U. S. 158 (64 S. Ct. 438, 88 L. Ed. 645), it was contended that religious liberty was abridged by the application of a statute regulating child labor to a guardian who permitted her minor ward to distribute religious literature on the streets at night. In vindicating the state's power to regulate in this way the dissemination of religious beliefs, the court declared: "The parent's conflict with the state over the control of the child and his training is serious enough when only secular matters are concerned. It becomes the more so when an element of religious conviction enters. Against these sacred private interests, basic in a democ-

racy, stand the interests of society to protect the welfare of children, and the state's assertion of authority to that end, made here in a manner conceded valid if only secular things were involved. The last is no mere corporate concern of official authority. It is the interest of youth itself, and of the whole community, that children be both safeguarded from abuses and given opportunities for growing into free and independent well-developed men and citizens. Between contrary pulls of such weight, the safest and most objective recourse is to the lines already marked out, not precisely but for guides, in narrowing the no man's land where this battle has gone on . . . the family itself is not beyond regulation in the public interest, as against a claim of religious liberty. Reynolds *v.* United States, 98 U. S. 145, 25 L. Ed. 244; Davis *v.* Beason, 133 U. S. 333, 10 S. Ct. 299, 33 L. Ed. 637. And neither rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interests in youth's well being, the state as parens patriae may restrict the parent's control by requiring school attendance, regulating or prohibiting the child's labor and in many other ways. Its authority is not nullified merely because the parent grounds his claim to control the child's course of conduct on religion or conscience. . . . It is sufficient to show what indeed appellant hardly disputes, that the state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare; and that this includes, to some extent, matters of conscience and religious conviction."

Activities characteristic of the secular life of the community may properly be a concern of the community even though they are carried on by a religious organization. (See, Prince *v.* Massachusetts, 321 U. S. 158, 165 (64 S. Ct. 438, 88 L. Ed. 645); United States *v.* Ballard, 322 U. S. 78, 87 (64 S. Ct. 882, 88 L. Ed. 1148); Murdock *v.* Pennsylvania, 319 U. S. 105, 109 (63 S. Ct. 870, 891, 87 L. Ed. 1292, 146 A. L. R. 81); Chaplinsky *v.* New Hampshire, 315 U. S. 568, 571 (62 S. Ct. 766, 86 L. Ed. 1031); Cox *v.* New Hampshire, 312 U. S. 569, 574 (61 S. Ct. 762, 85 L. Ed. 1049, 133 A. L. R. 1396); Davis *v.* Beason, 133 U. S. 333, 342 (10 S. Ct. 299, 33 L. Ed. 637); In re Dart, 172 Cal. 47, 56 (155 P. 63, Ann. Cas. 1917D 1127, L. R. A. 1916D 905); Chrisman

v. Culinary Workers' etc., 46 Cal. App. 2d 129, 132 (115 P. 2d 553); People *v.* Pierson, 176 N. Y. 201 (68 N. E. 243, 98 Am. St. Rep. 666, 63 L. R. A. 187); City of St. Louis *v.* Hellscher, 295 Mo. 293 (242 S. W. 652); Commonwealth *v.* Childs, 299 Mass. 367 (12 N. E. 2d 814); Commonwealth *v.* Green, 268 Mass. 585 (168 N. E. 101); Commonwealth *v.* Plaisted, 148 Mass. 375 (19 N. E. 224, 12 Am. St. Rep. 566, 2 L. R. A. 142); State *v.* White, 64 N. H. 48 (5 A. 828); Stull *v.* Reber, 215 Pa. 156 (64 A. 419, 7 Ann. Cas. 415); Matter of Frezee, 63 Mich. 396, 405 (30 N. W. 72, 6 Am. St. Rep. 310); State *v.* Chenoweth, 163 Ind. 94, 99 (71 N. E. 197); see, also, Zollman, Religious Liberty in the American Law, 17 Mich. L. Rev. 355, 456). Religious organizations engage in various activities such as founding colonies, operating libraries, schools, wineries, hospitals, farms, industrial and other commercial enterprises. Conceivably they may engage in virtually any worldly activity, but it does not follow that they may do so as specially privileged groups, free of the regulations that others must observe. If they were given such freedom, the direct consequence of their activities would be a diminution of the state's power to protect the public health and safety and the general welfare. With that power so easily diminished there would soon cease to be that separation of church and state underlying the constitutional concept of religious liberty. (See Evans *v.* Selma Union High School Dist., 193 Cal. 54 (222 P. 801, 31 A. L. R. 1121); Knowlton *v.* Baumhover, 182 Iowa 691 (166 N. W. 202, 5 A. L. R. 841); People ex rel. Ring *v.* Board of Education, 245 Ill. 334 (92 N. E. 251, 19 Ann. Cas. 220, 29 L. R. A. N. S. 442); Board of Education of Cincinnati, *v.* Minor, 23 Ohio St. 211 (13 Am. Rep. 233); Donahoe *v.* Richards, 38 Me. 379 (61 Am. Dec. 256).)

There is no doubt that plaintiff, like many religious organizations, regards the practice of charity as a religious duty. It is not exclusively a religious activity, however; many charitable activities spring from sources of the everyday life of the community unrelated to religion. The state itself has an active responsibility for the welfare of the poor, the aged, the sick, the unemployed, and the orphaned. There is a public interest in regulating the solicitation of

funds for these purposes. The very worthiness of such purposes creates a risk that the charitable impulses of people may be taken advantage of by solicitors who would collect funds under false pretenses or retain for themselves an undue percentage of what they collected. Fraud in the solicitation of charitable contributions can be most effectively controlled by measures such as the regulation in question requiring the presentation of information to enable the public to determine the nature and worthiness of the purpose for which the solicitation is made, and requiring proof of the good character and reputation of paid solicitors. In the words of Mr. Justice Shaw, speaking for a majority of the court in In re Dart, 172 Cal. 47, 56 (155 P. 63, Ann. Cas. 1917D 1127, L. R. A. 1916D 905): "The occupation of soliciting contributions to charitable purposes is clearly so far subject to the police power, that it may be regulated by laws or ordinances providing for a reasonable supervision over the persons engaged therein, and for the application and use of the contributions received to the purposes intended, in order to prevent unscrupulous persons from obtaining money, or other things, under the pretense that they were to be applied to charity, and to prevent the wrongful diversion of such funds to other uses, or to secure them against waste. Measures reasonably tending to secure these ends are unquestionably valid." (See cases collected in 57 A. L. R. 516, 128 A. L. R. 1361.)

The religious organization in Cantwell *v.* Connecticut, supra, on which plaintiff relies, solicited funds, not for charitable purposes but for its own support. Under the statute there involved it was allowed to engage in such solicitation only if the licensing officer determined that its cause was a religious one and issued a certificate to that effect. It was held that the vesting of this power in an administrative official amounted to "censorship of religion as the means of determining its right to survive" since under the statute the official's judgment was decisive as to what constituted a religious cause. The ordinance involved in the present case specifically exempts solicitations for religious purposes only; its object is to regulate all solicitations for charitable purposes. The Board of Social Service Commissioners has no authority to appraise the nature or

worthiness of a religious cause. In the Cantwell case the court recognized that even the solicitation of funds for the support of a religious organization is subject to reasonable regulation: "The general regulation, in the public interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose. Such regulation would not constitute a prohibited previous restraint on the free exercise of religion or interpose an inadmissible obstacle to its exercise." (310 U. S. 296, 305.) Thomas *v.* Collins, — U. S. — (65 S. Ct. 315, Adv. Opn., 89 L. Ed. 340, 89 L. Ed. —), cited in support of plaintiff's contentions, "does not involve the solicitation of funds or property." (65 S. Ct. 315, 324.) The court there held that a state could not constitutionally require a paid union organizer to register with the Secretary of State before making a public speech inviting a nonunion worker specifically and nonunion workers in the audience generally to join the union. "We think a requirement that one must register before he undertakes to make a public speech to enlist support for a lawful movement is quite incompatible with the requirements of the First Amendment." (65 S. Ct. 315, 327). The court was careful, however, to distinguish cases in which the speaker solicits funds from the public: "Once the speaker goes further, however, and engages in conduct which amounts to more than the right of free discussion comprehends, as when he undertakes the collection of funds or securing subscriptions, he enters a realm where a reasonable registration or identification requirement may be imposed. In that context such solicitation would be quite different from the solicitation involved here. It would be free speech plus conduct akin to the activities which were present, and which it was said the State might regulate, in Schneider *v.* Irvington, supra, 308 U. S. 147, 84 L. Ed. 155, 60 S. Ct. 146, and Cantwell *v.* Connecticut, 310 U. S. 296, 84 L. Ed. 1213, 60 S. Ct. 900, 128 A. L. R. 1352, both supra. That however must be done and the restriction applied, in such manner as not to intrude upon the rights of free speech and free assembly. In this case the separation was not maintained." In his concurring opinion in Thomas *v.* Collins

Mr. Justice Jackson gives the following reasons for these variations in state power: "This wider range of power over pursuit of a calling than over speech-making is due to the different effects which the two have on interests which the state is empowered to protect. The modern state owes and attempts to perform a duty to protect the public from those who seek for one purpose or another to obtain its money. When one does so through the practice of a calling, the state may have an interest in shielding the public against the untrustworthy, the incompetent, or the irresponsible, or against unauthorized representation of agency. A usual method of performing this function is through a licensing system.

"But it cannot be the duty, because it is not the right, of the state to protect the public against false doctrine. The very purpose of the First Amendment is to foreclose public authority from assuming a guardianship of the public mind through regulating the press, speech, and religion. In this field every person must be his own watchman for truth, because the forefathers did not trust any government to separate the true from the false for us. West Virginia State Board of Education *v.* Barnette, 319 U. S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628, 147 A. L. R. 674. Nor would I. Very many are the interests which the state may protect against the practice of an occupation, very few are those it may assume to protect against the practice of propagandizing by speech or press. These are thereby left great range of freedom."

(5a) The requirement that promoters and the solicitors working under them submit proof of their good character and reputation does not discriminate against plaintiff or other religious organizations or censor their religious beliefs, nor does the regulation vest arbitrary power in the administrative board in authorizing it to withhold a license it if is not satisfied that the applicant is of good character and reputation. Such a requirement is common in statutes regulating admission to professions and occupations involving duties of a fiduciary character. (In re Stepsay, 15 Cal. 2d 71 (90 P. 2d 489); Spears *v.* State Bar, 211 Cal. 183 (294 P. 697, 72 A. L. R. 923); Leach *v.* Daughtery,

73 Cal. App. 83 (238 P. 160); Riley *v.* Chambers, 181 Cal. 589, 593 (185 P. 855, 8 A. L. R. 418); Ex parte McManus, 151 Cal. 331 (90 P. 702); Ex parte Whitley, 144 Cal. 167 (77 P. 879, 1 Ann. Cas. 13); Grundling *v.* Chicago, 177 U. S. 183, 187 (20 S. Ct. 633, 44 L. Ed. 725); Graves *v.* Minnesota, 272 U. S. 425 (47 S. Ct. 122, 71 L. Ed. 331); New York ex rel. Liberman *v.* Van De Carr, 199 U. S. 552 (26 S. Ct. 144, 50 O. Ed. 305); Douglas *v.* Noble, 261 U. S. 165 (43 S. Ct. 303, 67 L. Ed. 590); see also, 12 A. L. R. 1435, 1450; 54 A. L. R. 1104, 1112; 92 A. L. R. 400, 415; Rottschaefer, Constitutional Law, pp. 466, 482.) The filing of a bond is also a common requirement in the regulation of occupations or activities involving the handling of entrusted funds. (Palmer *v.* Continental Casualty Co., 205 Cal. 34, 35 (269 P. 638); Clark *v.* Patterson, 213 Cal. 4 (300 P. 967, 75 A. L. R. 1124;) Grundling *v.* Chicago, supra; People of the State of New York *v.* Perretta, 253 N. Y. 305 (171 N. E. 72, 84 A. L. R. 636); see 33 Am. Jur., Licenses, sec. 54; 87 A. L. R. 145; 95 A. L. R. 1224; 103 A. L. R. 405; 120 A. L. R. 950.) The license fee is a reasonable one, covering the expenses of investigations and administration.

The board has no discretion to withhold a license if the applicant's good character and reputation and his financial responsibility are established and the required bond is filed. The board is not free to deny licenses, but must act reasonably in the light of the evidence presented. (Riley *v.* Chambers, 181 Cal. 589, 595 (185 P. 855, 8 A. L. R. 418); In re Holmes, 187 Cal. 640, 647 (203 P. 398); Tarpey *v.* McClure, 190 Cal. 593, 600 (213 P. 983); Bank of Italy *v.* Johnson, 200 Cal. 1, 32 (251 P. 784); People *v.* Globe Grain and Mill Co., 211 Cal. 121, 125 (294 P. 3); Cranford *v.* Jordan, 7 Cal. 2d 465, 467 (61 P. 2d 45); Leach *v.* Daugherty, 73 Cal. App. 83 (238 P. 160); Hall *v.* Geiger-Jones Co., 242 U. S. 539, 554 (37 S. Ct. 217, 61 L. Ed. 480); Graves *v.* Minnesota, supra, p. 428; Douglas *v.* Noble, supra, p. 170; New York ex rel. Lieberman *v.* Van De Carr, supra; Plymouth Coal Co. *v.* Commonwealth of Pennsylvania, 232 U. S. 531, 545 (34 S. Ct. 359, 58 L. Ed. 713); Minnesota *v.* Probate Court, 309 U. S. 270, 277 (60 S. Ct. 523, 84 L. Ed. 744, 126 A. L. R. 530); Yakus *v.* United States, 321 U. S. 414, 434, 435 (64 S. Ct. 660, 88 L. Ed. 834.))

The provision empowering the board to revoke a license in case of unfair, unjust, inequitable or fraudulent practices of solicitation is neither vague nor uncertain and affords no possibility for the censorship of religious beliefs. In Agnew *v.* Daugherty, 189 Cal. 446, 448-449 (209 P. 34), this court upheld a similar provision in the Corporate Securities Act making the granting of a permit dependent on the commissioner's finding that the "proposed plan of business . . . is not unfair, unjust or inequitable" and that the methods to be used to dispose of securities "are not such as, in his opinion, will work a fraud upon the purchaser thereof." (See, also, People *v.* Kuder, 93 Cal. App. 42 (269 P. 198, 630); People *v.* Stewart, 115 Cal. App. 681, 689 (2 P. 2d 195); Yakus *v.* United States, supra, pp. 426-427 and cases there cited.)

It is contended that since the trial court found that plaintiff is engaged exclsively in religious activities, the Charities and Relief Ordinance is rendered inapplicable to plantiff's solicitations because of its provision that it "shall not be applicable to solicitations made solely for evangelical, missionary or religious purposes." There is no conflict in the evidence, however, as to what plaintiff's activities are. The issue presented is one of law, namely, whether the charitable purposes for which plaintiff solicits funds are exclusively religious purposes within the meaning of the ordinance. The trial court erroneously concluded that because plaintiff solicits funds for charitable purposes as part of its religious program its solicitations are solely for religious purposes within the meaning of the ordinance. The ordinance specifically differentiates charitable from religious purposes. No person may solicit "any contribution for any charitable purpose" without complying with the requirements of the ordinance. The ordinance does not exempt solicitations for charitable purposes undertaken by religious organizations. Solicitations for charitable purposes, namely, for "philanthropic, social service, benevolent, patriotic" purposes, are subject to regulation whether or not they are undertaken by a religious organization. The intention to maintain a sharp differentiation between charitable and religious purposes is apparent in the provision that if a solicitation for religious purposes is likely to give

the public the impression that funds are sought for charity, the board shall "investigate the matter of such solicitation and give publicity to its findings thereon in such manner as it may deem best to advise the public of the facts of the case." The solicitation of funds to provide food, shelter, and clothing for those in distress is clearly for a charitable purpose and is therefore regulated by the ordinance. Plaintiff admittedly solicits funds for the purpose of giving relief to persons in distress. Since this purpose is charitable within the meaning of the ordinance, plaintiff's solicitations for that purpose are subject to the ordinance.

The judgment is reversed.

Gibson, C. J., Shenk, J., and Spence, J., concurred.

CARTER, J.—I dissent. The majority opinion places the stamp of validity in toto upon a regulatory ordinance containing requirements so stringent that with their enforcement humble charities and good works must inevitably bow to

"The organized charity scrimped and iced
"In the name of a cautious statistical Christ."

Admittedly the intrusion into community existence of religious activities characteristic of the secular life brings into sharp focus the conflicting loyalties to church and state, the clash of religious freedom with social legislation. (See Conscience *v.* The State, by Prof. C. C. McCown, 32 Cal. L. Rev. 1; Liberty under the Fourteenth Amendment by John Raeburn Green, 43 Mich. L. Rev. 437; Bill of Rights Review of Am. Bar Ass'n., vol. 1, no. 2.)

Since 1940 the subject has been brought frequently before the United States Supreme Court by the sect known as Jehovah's Witnesses, and that court has been alert to protect the free exercise of religion against abridgement. Its recent decisions, rendered at a time when the currents of world thought have been against democracy and toleration, have, as Professor McCown comments, made a substantial contribution to the defense of the liberties guaranteed by the Constitution, and the emphasis in several of the opinions upon the rights of "little people," of causes that

are humble, needy, and without financial resources, is particularly notable. Quoting from the cited article, "The justices of the Supreme Court echo the language of social and religious protest from almost the beginning of history (2500 B. C.) in Mesopotamia, Egypt, and later in Palestine, down to the present day. Such language is familiar in the Hebrew prophets, the Psalms, and the Gospels. The obligation of government to protect the rights of the weak against those who possess political and economic power has been repeatedly proclaimed by prophets, but all too seldom recognized by the powers that be. Both democracy and religion demand the protection of the advocate of unpopular causes, for practically every reform, whether political, social, or religious, begins as a protest against vested interests and majority opinions. . . . In dealing with Jehovah's Witnesses the Supreme Court has shown a sanity and a consideration for the ultimate issues involved which cannot but have some effect upon the cowardice of politicians and the impatience of crowds." (32 Cal. L. Rev. pp. 14, 30.) (see also Cantwell *v.* Connecticut, 310 U. S. 296 (60 S. Ct. 900, 84 L. Ed. 1213, 128 A. L. R. 1352); Largent *v.* Texas, 318 U. S. 418 (63 S. Ct. 667, 87 L. Ed. 873); Jamison *v.* Texas, 318 U. S. 413 (63 S. Ct. 669, 87 L. Ed. 869); Murdock *v.* Pennsylvania, 319 U. S. 105 (63 S. Ct. 870, 891, 87 L. Ed. 1292, 146 A. L. R. 81); Martin *v.* Struthers, 319 U. S. 141 (63 S. Ct. 862, 882, 87 L. Ed. 1313); West Virginia *v.* Barnett, 319 U. S. 624 (63 S. Ct. 1178, 87 L. Ed. 1628, 147 A. L. R. 674).) In these decisions state legislation impinging upon a claimed religious freedom has been held valid only where there has been a strong showing of an essential need for regulation in the interest of the public safety, health, and welfare, or for the maintenance of morals, peace, and order, protection against a clear and present danger, or the like.

During the world war, as also pointed out by Professor McGown, the rise of nationalism to the status of a religious cult and the contemporary sharpening of the Christian conscience revitalized and realigned issues that were supposedly settled. Social problems have arisen which are ancient, but also very modern, and they are made the more

difficult of solution by the traditions and social, political, religious, and legal philosophies with which they are surrounded. This country, having just emerged from a great conflict in which a guarantee of religious liberty to all peoples was a major aim, should be on guard against the subtle undermining, in the guise of municipal regulation, of those very rights which it has gone to such lengths to secure for others. For this reason the majority holding in the present case, with its reactionary trend, is particularly deplorable.

Obviously the commission of crime in the name of religion cannot be tolerated and the state must be safeguarded. The public are entitled to reasonable protection in community life, and fanaticism or misguided earnestness cannot be allowed to hold rein over the goodwill of the people. But beyond situations of emergency and present danger, the field of regulation should be extremely narrow. Thus in Schneider *v.* Irvington, 308 U. S. 147, 161 (60 s. Ct. 146, 84 L. Ed. 155), the United States Supreme Court, after stressing the importance of preventing the restriction of enjoyment of the constitutional liberties, said: "In every case, therefore, where legislaive abridgement of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions. And so, as cases arise, the delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reason advanced in support of the regulation of the free enjoyment of the rights."

Using this formula to test the legislation here under review, it appears that one of the main reasons advanced in support of the regulation is its asserted necessity to protect the public from fraud. Resort to the penal statutes and usual methods of dealing with this evil is said to afford insufficient protection, in that warm hearted and generous citizens are especially vulnerable to solicitations made in the name of a religion or charity because of the nature of the appeal and their reluctance to turn a deaf ear to any

cry of the poor and needy. Thus a delicate social problem is posed. Which is the more important, to give the public added protection, over that of the penal statutes, against annoyance, inconvenience, and possible fraud, or to preserve intact the cherished right of religious liberty? Should the state essay, at the expense of invasion of a constitutional right, to proect a citizen from his own inclination, or perchance his weakness, in responding to charitable solicitation without due inquiry into the worth of the sponsored cause? Is it not more in keeping with the American tradition to instill in youth and preserve in the thought of the people that individual independence, strength of character, moral stamina, and perception which will enable them to judge personally the good or bad fajth of a colporteur or solicitor and the merit of the cause he espouses?

That some fraud may escape detection is to be anticipated. This is more or less true in all walks of life despite volumes of protective legislation. But the diversion to wrongful channels of some part of the public contribution to charity is not a major catastrophe when weighed against the cost of protection effected only by carving a large slice from the bill of rights. Indeed it may be asked whether any community can afford to undertake a regulatory program which may largely deprive the public of the opporunity to hear and respond to pleas of other than organized and municipally approved charities, thus stifling the growth and character development gained by the exercise of pity, compassion, and generosity. Small are the sums contributed by the average community to charity when compared with the large amounts customarily spent for luxuries and entertainment. In one sense the benefit of the opportunity to give where the right hand knows not what the left hand is doing is of more intrinsic value than the actual raising of the money, for all are in need of the spiritual enrichment which comes of free will offering. There are few housewives who will not cheerfully give from their larder to ten itinerant mendicants rather than run the risk of turning away hungry one man worthy of alms. And by the same reasoning there is less danger from solicitation for unworthy causes than from regulations so stringent that they may crush the humble workers, the "little people,"

destroy their good deeds, impinge upon their practice of religion, and form a breeding ground for intolerance, totalitarianism, or narrow nationalism.

All of this has been given recognition in the decisions of the United States Supreme Court. In the Cantwell case it is said at pages 308 and 310, "But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy. The essential characteristic of these liberties is, that under their shield many types of life, character, opinion, and belief can develop unmolested and unobstructed. Nowhere is this shield more necesary than in our own country for a people composed of many races and of many creeds. There are limits to the exercise of their liberties. The danger in these times from the coercive activities of those who in the delusion of [redacted]ial or religious conceit would incite violence and breach[redacted] the peace in order to deprive others of their equal right to the exercise of their liberties, is emphasized by events familiar to all. These and other transgressions of those limits the states appropriately may punish. • • • *Equally obvious is it that a state may not unduly suppress free communication of views, religious or other, under the guise of conserving desirable conditions.* Here we have a situation analogous to a conviction under a statute sweeping in a great variety of conduct under a general and indefinite characterization, and leaving to the executive and judicial branches too wide a discretion in its application."

Again it is said in the Schneider case at page 164: "Conceding that fraudulent appeals may be made in the name of charity and religion, we hold a municipality cannot, for this reason, require all who wish to disseminate ideas to present them first to police authorities for their consideration and approval, with a discretion in the police to say some ideas may, while others may not, be carried to the homes of citizens; some persons may, while others may not disseminate information from house to house. Frauds may be denounced as offenses and punished by law. Trespasses may similarly be forbidden. If it is said that these means are less efficient and convenient than bestowal of power on

police authorities to decide what information may be disseminated from house to house, and who may impart the information, the answer is that considerations of this sort do not empower a municipality to abridge freedom of speech and press." The same is true with respect to abridgement of the right of religious freedom. Many recent pronouncements of similar tenor might be added to those above cited.

Before proceeding to a more detailed review of the legislation here involved, it may be stated that plaintiff is an incorporated religious organization and that it operates a mission and store, the latter being called its industrial department. Among its religious activities are the holding of religious services at its mission by a minister ordained by it, church services and missionary work, giving away the New Testament and religious tracts. It conducts its operations in substantially the following manner: Financial solicitors, working from its headquarters, endeavor to obtain money contributions. These contributions are delivered to the treasurer of the organization and are used for carying on its religious activities. The present treasurer has been a solicitor for plaintiff for many years and retains 30 per cent of the funds collected. About 50 per cent of the funds are used for salaries and expenses. The minister's sole compensation is derived from contributions and it is said to cover no more than his expenses. Plaintiff also gives assistance in property and money to those in need. In operating its store or industrial department it acquires secondhand property, most of which is called salvage, and sold to the public. The remainder is disposed of as junk. The truck drivers who collect the property receive a percentage of the salvage, but they do not participate in the proceeds derived from operation of the store. They also retain all but 10 per cent of the proceeds of the sale of the junk. Solicitors of salvage work from trucks and receive an average of 50 cents an hour. The store uses its funds for expenses of operation and occasionally does charity work. The balance is delivered to plaintiff's treasurer. None of the salvage solicitors distribute plaintiff's religious literature.

Defendant department claims that plaintiff, in operating its store, is a "promoter" as defined in the city ordin-

ance, and demands that it obtain a license authorizing solicitations for the store. No demand is made in regard to religious activities, but a religious organization is required to file a notice of intention and obtain a permit to solicit funds for charitable purposes. Apparently defendant department determines whether an organization is soliciting for charity or for religion and has adopted a rule that 50 per cent of the amount collected must go for charitable purposes.

The trial court found on substantial evidence that plaintiff is a "duly constituted and functioning religious organization, engaged exclusively in the promulgation, by literature and word of mouth, of its religious beliefs, by and through its auxiliaries, and in the procuring of donations in the form of money and articles of value in the prosecution and furtherance of its religious activities," and that if plaintiff is required to obtain a permit and pay a license fee as a condition of solicitation and receipt of donations "to be used in the furtherance of said religious activities," this "will amount to a prior restraint on the exercise of (its) religious activities within the meaning of the Constitution of the United States * * * an infringement upon the free exercise of * * * religious liberty as protected by the Constitution."

These findings require a consideration first of the question whether plaintiff's operations come in whole or in part within the exemption provision of the ordinance. Solicitations upon premises owned or occupied by the association in whose behalf the solicitation is made, and the soliciting of funds from members of the association are not subject to the promoter, solicitor, and certain other regulatory provisions of the ordinance. Exemption is also extended to "solicitations made *solely* for evangelical, missionary or religious purposes," but with the proviso that if such solicitations are conducted in a manner which, in the opinion of the board, may give those solicited the impression that the purpose of the solicitation is in whole or in part charitable, the board may investigate the matter and give such publicity to its findings as it deems best to advise the public of the facts.

In considering the applicability of the exemption to plaintiff's activities it would at first blush appear, and the trial court concluded, that inasmuch as all of plaintiff's operations, including its charitable work, are conducted for and as part and parcel of and incident to its religious purpose, all must come within the exemption. However, a review of the ordinance in its entirety indicates that by use of the word "solely" in the exemption clause, it was intended to differentiate between solicitations for promulgation and support of the religion or church itself, and solicitations for charitable work performed as part of the religious purpose, with exemption accorded to the former but not to the latter. If the exemption is thus unavailable where the religious organization solicits for charity in connection with the promulgation and exercise of its doctrines of religion (and this seems to be the interpretation placed upon the ordinance by the rules and regulations of the board and by the officers in enforcing it), then the validity of the regulatory provisions must be tested by the limitations, if any, which may be imposed upon the exercise of the right of religious liberty.

To a degree the majority opinion recognizes this fact but it implies, without straightway so declaring, that charitable undertakings are separable from the religious purpose inducing them, and that by severance they may be removed to the realm of secular affairs and there be subjected to governmental regulation without intrusion of the bothersome problem of preservation of the constitutional right of religious liberty. This implication is inherent in the discussion which starts with the declaration (p. 12): "Many activities prompted by religious motives can hardly be differentiated from secular activities. If the applicability of government regulation turned on the religious motivation of activities, plausible motivations would multiply and in the end vitiate any regulation," and proceeds to state (pp. 14-15): "Activities characteristic of the secular life of the community may properly be a concern of the community even though they are carried on by a religious organization • • • Religious organizations engage in various activities such as founding colonies, operat-

ing libraries, schools, wineries, hospitals, farms, industrial and other commercial enterprises. Conceivably they may engage in virtually any worldly activity, but it does not follow that they may do so as specially privileged groups, free of the regulations that others must observe * * * There is no doubt that plaintiff, like many religious organizations, regards the practice of charity as a religious duty. It is not exclusively a religious activity, however; many charitable activities spring from sources in the everyday life of the community unrelated to religion. The state itself has an active responsibility for the welfare of the poor, the aged, the sick, the unemployed, and the orphaned. There is a public interest in regulating the solicitation of funds for these purposes * * *"

In the above discussion the majority opinion quotes copiously from Prince *v.* Massachusetts, 321 U. S. 158 (64 S. Ct. 438, 88 L. Ed. 645), a case which has been criticized as being out of line with other recent United States Supreme Court decisions. (See Liberty Under the Fourteenth Amendment, *supra*, at p. 446.)

It is true that religious liberty "embraces two concepts—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be" (Cantwell *v.* Connecticut, *supra*, 310 U. S. 296, 303), and that where the religious organization conducts activities characteristic of the secular life of the community, they may be subject to proper regulation under the police power. But, as already pointed out, this power of regulation is not unrestricted and it can only be enforced with due regard to preservation of constitutional rights. Both freedom of religious thought and freedom of religious action come within the protection of the bill of rights. This freedom cannot be whittled away by carving out segments of religious activities and relegating them to the realm of secular affairs. If that were permitted, the right of action for a religious purpose could eventually be destroyed by the gradual severance and classification as secular of every activity undertaken to promote the religious purpose.

Aside from the pronouncements found in the late federal decisions, it has long been the law of this state that a charity conducted as part of a religious practice is inseparable

from the religion itself. The utter impossibility of any severance is made plain in the case of Application of Dart (1916), 172 Cal. 47 (155 P. 63, Ann. Cas. 1917D 1127, L. R. A. 1916D 905), where in speaking of the Jewish and Christian religions it is said (pp. 55-56): "In both of these religions charity is the central word. It is enjoined, not as a good thing, or a wise thing, or as a kindly thing only, *but as a fundamental part of the religion itself.* Says the Jewish faith: 'On three things the world is stayed; on the Thorah (the law) and on worship and on the bestowal of kindness.' 'Now the end of the commandment is charity out of a pure heart,' says Paul to Timothy. 'Charity is the scope of all God's commands,' preaches Chrysostom. 'All perfection of the Christian life is to be attained according to charity,' declares Thomas Aquinas. Does it need more, does it need so much, to show that in these religions *the bestowal of charity, the devotion of life to charity, are a part of the religion itself?* And does it demand discussion to establish so plain a truth as that touching religion there is a doubtful zone which legislation should be most reluctant to enter? The founders of the nation recognized it when they placed the great guaranty of religious liberty in the constitution of a free people, and it is for every court to see that liberty is not encroached upon and that freedom gnawed and impaired by any experimental legislation however well meant. So when legislation does enter that uncertain domain, the fact that it is there must bring it to condemnation. In accordance with the dictate of the Constitution itself the doubt will be resolved in favor of religious liberty. And it will be found better in the long run that the free exercise of religion be preserved in its integrity, better for the nation, better for charity itself which owes so much to religion, even if the efficiency of religious charities be not up to the standard of perfection set by the Municipal Charities Commission. If, under that standard, seventy-five cents of every dollar would go to the objects of charity, while under the less efficient methods in vogue but fifty cents of each dollar actually reaches the beneficiaries, it is not to be forgotten that there will be many millions fewer of these dollars to be distributed in charity if the activities of the religious are hampered, thwarted, and stayed."

The above comment is extremely apropos. If, under defendants' interpretation and enforcement of the ordinance, plaintiff is to be denied the benefit of the exemption clause insofar as its charitable activities are concerned, then the regulatory provisions of the ordinance must be subjected to close scrutiny in order to determine whether they infringe the guarantee of religious liberty. Although concededly acts of charity apart from religious motivation, might be performed by the state, or by a professed atheist or non-religionist, nevertheless the evidence here establishes beyond contradiction that plaintiff's charities are an integral part of and inseparable from its religious purpose. From common knowledge and in challenge to the severance theory of the majority opinion, it must be said that acts of charity which do not stem, consciously or unconsciously, from early religious training or Christian inheritance are sparse. It is a matter of common historical knowledge that public charities and benevolent associations for the gratuitous relief of every species of distress, are peculiar to Christianity; no other system of civil or religious policy has originated them; they form its highest praise and characteristic feature. The Apostle Paul in chapter XIII of his first Epistle to the Corinthians epitomized his concept of the essential intangibles of Christianity and concluded with the immortal verse: "And now abideth faith, hope, charity, these three; *but the greatest of these is charity.*" Thus charity is the heart and basic principle of plaintiff's religion. To destroy that heart leaves the body lifeless. Yet the majority opinion does just that. It declares charity to be a secular affair in spite of the above showing to the contrary and thus subjects the exercise by plaintiff of its religion to unrestricted regulation and ultimate destruction.

Moreover, the anomalous result of the majority opinion is that a religious organization may use its own funds for a charitable purpose without hindrance, but if it solicits directly for the charity, the solicitation is subject to the cumbersome ordinance provisions hereinafter discussed. This makes the matter merely one of the form of the solicitation. To avoid regulation and gain the protection of the exemption, the solicitor only needs to make his plea for funds in the name of his church. The church then receives

the donations and uses them for any purpose it may choose, good or bad, charitable or uncharitable, and it is not reached by the ordinance provisions.

Proceeding now to test the regulatory provisions of the ordinance as against the claimed infringement of the constitutional guarantee of religious liberty, it will be noted that the majority opinion incorporates the provisions by marginal reference and then, upon a discussion replete with generalizations, none of which standing alone can be said to contain an incorrect statement of the law, it announces the broad conclusion that, "We find nothing unduly burdensome or unreasonable in any of these provisions" (p. 15); "In our opinion the classification effected by this ordinance is reasonable and the standards provided are adequate" (pp. 7-8).

Were each regulation discussed in detail and given separate consideration, it is doubtful that even the author of the opinion would say that none is unduly onerous. Section 44.05 imposes upon any person who wishes to solicit "any contribution for any charitable purpose," a duty of filing with the department at least ten days prior to the commencement of the work, a written notice of intention containing "complete information" upon eleven comprehensive phases of the undertaking. But a glance at this section shows that the much maligned income tax forms issued by the federal government are no more complex and demanding than is this notice of intention in its requirements of itemized data. One wonders where the average almsman or solicitor is to acquire the educational background to enable him to supply such statistics. Must the opportunity for exercising one's religion by doing charitable work be limited to those who are apt in reading, writing and arithmetic?

The solicitor must show (a) "The purpose of the solicitation and use of the contribution to be solicited"; he must make (b) "A specific statement, supported by reasons and, if available, figures, showing the need for the contribution proposed to be solicited"; he must show (c) "The character of such solicitation and how it will be made or conducted." How can these requirements be fitted into the program of the itinerant religionist who solicits as he wanders, taking

with the one hand to give freely with the other, reserving for himself only bare necessities? What freedom is left for the missionary and walking preacher who play so colorful a part on the American scene, soliciting their charities, spreading their doctrines, without preconceived plan and as each feels himself daily to be guided, and without compiling statistics or publishing abroad the good works.

Further requirements of the notice indicate that its enforcement will doubtless effect the disappearance of all but organized institutions, for the applicant must also show the following: "(d) The expenses of the solicitation, including salaries and other items, if any, regardless of from what funds such expenses are payable; (e) What portion of the contributions collected as a result of the solicitation will remain available for application to the specific purposes declared in the Notice of Intention as the object of the solicitation; (f) A specific statement of all contributions collected or received by such person or association within the calendar year immediately preceding the filing of such Notice of Intention. The expenditure or use made of such contributions, together with the names and addresses of all persons or associations receiving salaries, wages, compensation, commissions or emoluments from such contributions, and the respective amounts thereof; (g) The names and addresses of the officers and directors of any such association for which the solicitation is proposed to be made; (h) A copy of the resolution, if any, of any such association authorizing such solicitation, certified as a true and correct copy of the original of such resolution by the officer of such association having charge of the records thereof; (i) A statement that the signers of such Notice have read and are familiar with the provisions of this Article and will require all solicitors engaged in such solicitation to read and be familiar with all sections of this Article prior to making any such solicitation." This last quoted provision expressly bars all who have not attained a sufficient degree of learning to abide by its terms.

As a whole the involved demands are a far cry from the simple regulation endorsed in the Cantwell case, to wit: that "Without doubt a state may protect its citizens from fraudulent solicitation by requiring a stranger in the com-

munity, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent. The state is likewise free to regulate the time and manner of solicitation generally, in the interest of public safety, peace, comfort or convenience" (310 U. S. at p. 306). A regulation such as that described is not unreasonable and affords a sufficient basis for the opening of an investigation in the event charges of fraud should be lodged against a solicitor (Murdock v. Pennsylvania, 319 U. S. 105 (63 S. Ct. 870, 891, 87 L. Ed. 1292, 146 A. L. R. 81)). Probably no sincere solicitor would protest having to register, carry an identification card, and conduct his activities in a seemly manner and at reasonable hours. But he should be immune from any more onerous legislative interference, even though to some, his efforts might appear to be misguided.

The ordinance contains further requirements even more burdensome than those above set forth. With the notice of intention there must be filed a statement of any agreement between solicitors and the organization for which they are soliciting (#44.06). Whenever in the opinion of the Board of Social Service Commissioners the notice of intention does not contain sufficient information for the public concerning the facts required to be therein stated, there must be filed within 48 hours such additional information as the board requests (#44.06). The department has power to investigate the statements in the notice of intention and the methods and manner of solicitation, to inspect records of the association for which the solicitation is made, and to issue to solicitors information cards at four cents a card. These information cards are in effect permits to solicit and they must set forth the facts stated in the notice of intention and such additional information as in the opinion of the board will be of assistance to the public in determining the nature and worthiness of the purpose for which the solicitation is made (#44.03). The board may recall information cards when they receive additional information which renders incorrect any statement thereon and amend them (#44.02). No person shall employ any misstatement, deception, or fraud in connection with the solicitation (#44.04), or use a fictitious name (#44.07).

A person may not solicit for a charitable association unless it maintains records of receipts and disbursements (#44.08. Solicitors must have the written authorization of the organizations they represent (##44.10, 44.11). They must exhibit their information card to the prospective donee when soliciting (#44.12), and file a complete report of their activities with the board (#44.14). They must give receipts to donees stating various facts (#44.15). Violation of the ordinance is made punishable as a crime.

In support of its declaration of the validity of these provisions, the majority opinion states that they confer upon the department no authority to withhold information cards when the requirements are met, and it cannot be assumed that the department will abuse its authority in order to withhold them. This is true, but is is also apparent that a procedure so complex and so costly in time and effort will, so far as many solicitors are concerned, be prohibitive. It is said in the Cantwell case (310 U. S. 296, 305) that "The general regulation, in the public interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose." Assuming that the provisions above quoted do not involve any religious test, nevertheless they are so demanding as not only to open the door to unreasonable delay and abuse of discretion, but also as possibly to bar certain classes of solicitors found among the "little people." Obviously, they do unreasonably obstruct and delay the collection of funds.

Still more restrictive provisions of the ordinance apply to so-called "promoters," who are defined as "any person who for pecuniary compensation or consideration received, or to be received, solicits or is engaged in the business of or holds himself out to the public as engaged in the business of soliciting contributions for or on behalf of any other person or any charitable association, corporation, or institution, or conducts, manages, or carries on * * * or is engaged in the business of or holds himself out as engaged in the business of conducting, managing or carrying on any drive or campaign for any such purpose; provided, however, that pecuniary compensation or consideration as used herein,

shall include, but shall not be limited to, participation on a percentage basis in any fund solicited, or raised, for or on behalf of any other person, firm, association or corporation; provided, further, that no person who is a bona fide paid officer or employee of a social service agency endorsed by the Board of Social Service Commissioners, shall be considered a promoter within the meaning of this article" (#44.01).

Section 44.19, subdivision 1, provides that "No promoter shall in any manner whatsoever, solicit within the City of Los Angeles any contribution for any actual or purported charitable use, purpose, association, corporation or institution without license from the Board so to do."

Subdivision 2, entitled "Application," states that "To obtain such license, such promoter shall make and file with the Board an application therefor in writing. In such application, the applicant shall set forth, in addition to such information as may be required by the Board: (a) The name and address of the applicant. * * * (b) A succinct statement of facts showing that the applicant * * * is of good character and reputation. * * * (c) The general plan, character and method in or by which the applicant proposes to conduct its or his business as a promoter."

Subdivision 3 is entitled "Bond," and states: "At the time of so filing with the Board an application for such license the applicant shall file and thereafter maintain with the Board a good and sufficient bond in the aggregate sum of * * * $2,000 running to the City of Los Angeles for the use and benefit of interested persons and parties. * * * Said bond shall be conditioned upon the strict compliance, by the Principal, with the provisions of this Article and the payment of any direct pecuniary loss sustained, through any act of grand or petty theft on the part of the Principal, by any donor or by any person on whose behalf the funds or personal property were solicited or received by the Principal. * * *"

Subdivision 5, entitled "Investigation," provides that "The Board shall examine such application and shall make such further investigation of the applicant and its or his affairs as the Board shall deem advisable. If from such examination the Board shall be satisfied: (a) That the ap-

plicant is of good character and reputation. * * * (b) That applicant has sufficient financial responsibility to carry out the obligations incident to any solicitation such applicant may make within the City of Los Angeles as such promoter and that all of the statements made in such application are and each of them is true and that * * * applicant * * * has (not) violated any of the provisions of this Article or has (not) engaged in any fraudulent transaction or enterprise, and that the applicant intends to conduct its business fairly and honestly, the Board shall issue to the applicant a license to solicit as a promoter within the City of Los Angeles, contributions. Otherwise, the Board shall deny the application and refuse to issue a license, and shall notify the applicant of the decision of the Board. * * *"

Under the heading "Revocation," subdivision 6 states that "All licenses issued hereunder shall be subject to the condition that the applicant thereafter shall cease and desist from acting as a promoter within said City of Los Angeles when ordered so to do by the Board if the Board finds after a hearing * * * that any act or omission of such promoter * * * in making any solicitation or in the conduct of the business of promoter within the City of Los Angeles is unfair, unjust, inequitable or fraudulent. The Board must suspend or revoke any such license if, after hearing upon notice, the Board shall find the existence of any of the grounds hereinabove enumerated for the denial of an application for a promoter's license; provided, however, that such suspension or revocation shall be discretionary with the Board if the only ground for such revocation is such that it does not affect the licensee's honesty and integrity, or his ability properly to perform his duties as a promoter."

Subdivision 7 deals with "Termination" of licenses at the close of each fiscal year, and subdivision 8 with "Funds." The latter subdivision provides that "No promoter shall commingle any contribution with the promoter's own funds or property, or fail at any time to maintain and keep all contributions separate and apart from the promoter's own funds or property. * * * (a) It shall be unlawful for any promoter to cause or permit any person

for pecuniary compensation or consideration received or to be received by such person to solicit or receive on his behalf or at his instigation, under his direction or control or in his employment, any contribution unless such person shall be registered as a solicitor by the Board. (b) No person shall be so registered as a solicitor unless he shall first appear personally before the Board and furnish satisfactory proof that he is a person of good moral character, that his reputation for honesty is good, and unless he first file with the Board and thereafter maintain a bond satisfactory to the Board in the sum of * * * $500.00, conditioned for the payment of any direct pecuniary loss which may be sustained by the promoter, by any donee, or by any person on whose behalf any contribution was solicited or received, through any act of grand or petty theft, committed by such person. (c) The provisions of paragraphs b, c, d, and e of subsection 3, above, shall apply to bonds filed pursuant to this subsection. (d) The Board shall collect a fee of * * * $1.00 for each such registration. * * *"

The comment which has been made concerning the unreasonableness of the ordinance provisions relating to solicitors applies with double force to these "promoter" provisions, and they are also subject to additional criticism.

From the definition of a "promoter," as heretofore quoted (#44.01, supra), it appears that the term is not confined to business solicitors, such as employees of a promotion agency handling fund raising campaigns, but includes any person who for pecuniary compensation solicits for another. Many solicitors for charity are indigent religionists. As an integral part of the exercise of their religious right they solicit funds in support of their cause and the charitable activities incident to it, and of necessity they retain some portion of the money collected in order that they themselves may be clothed and fed. To impose upon this class the burden of posting a $2,000 bond, of paying a license fee, and of showing sufficient financial responsibility to carry out the obligations incident to their solicitation is to seriously impede, if not prohibit, their undertakings at the outset. A required qualification of financial standing sufficient to enable such an applicant to post a $2,000 bond will neither insure honesty nor create a deter-

rent against fraud. In many cults and religions it is traditional that poverty and saintliness shall walk hand in hand. Many creeds view the possession of property and assets, or of more money than necessary for bare essentials, as a manifestation of sins of worldliness. Yet history shows that some of the finest deeds of charity and most unselfed works known to man have been accomplished by adherents of these views. It is thus a dangerous legislation which would impede the charitable impulses and hamper the undertakings of all but the financially able—which would give to men of property but deny to the poor the right equally possessed by both to develop and carry out the tenets of their creed.

The fee of $25 may not seem large but when it is combined with the expense and difficulty of obtaining a bond (if indeed such could be obtained by an indigent religionist even if the premium were paid for him), and establishing the vague condition of "financial responsibility," it involves cumulative burdens too heavy to be borne. In seeking to justify its declaration of the reasonableness of these provisions, the majority opinion states that the filing of a bond is "a common requirement in the regulation of occupations or activities involving the handling of entrusted funds," and that "The license fee is a reasonable one, covering the expenses of investigations and administration" (p. 20). This latter statement may have been inspired by the fact that the late federal decisions speak of the distinction between a license fee solely to defray the costs of enforcement of a regulatory statute and one for revenue purposes, condemning only the latter. But here, even if the regulatory provisions of the ordinance were otherwise reasonable as applied to religionists and justified the imposition of a fee sufficient to meet the costs of administration, there is no indication whatsoever that these costs would amount to $25 for the handling of each application or that that sum was fixed in contemplation of reimbursement for expenses.

The following excerpt from Murdock v. Pennsylvania, 319 U. S. 105, pp. 111-113 (63 S. Ct. 870, 891, 87 L. Ed. 1292, 146 A. L. R. 81), is pertinent: "It is plain that a religious organization needs funds to remain a going concern • • • Freedom of speech, freedom of the

press, freedom of religion are available to all, not merely to those who can pay their own way. * * * Those who can tax the exercise of this religious practice can make its exercise so costly as to deprive it of the resources necessary for its maintenance. Those who can tax the privilege of engaging in this form of missionary evangelism can close its doors to all those who do not have a full purse. Spreading religious beliefs in this ancient and honorable manner would thus be denied the needy. Those who can deprive religious groups of their colporteurs can take from them a part of the vital power of the press which has survived from the Reformation * * * In all of these cases the issuance of the permit or license is dependent on the payment of a license tax. And the license tax is fixed in amount and unrelated to the scope of the activities of petitioners or to their realized revenues. It is not a nominal fee imposed as a regulatory measure to defray the expenses of policing the activities in question. It is in no way apportioned. It is a flat license tax levied and collected as a condition to the pursuit of activities whose enjoyment is guaranteed by the First Amendment. Accordingly, it restrains in advance those constitutional liberties of press and religion and inevitably tends to suppress their exercise. * * * So, it may not be said that proof is lacking that these license taxes either separately or cumulatively have restricted or are likely to restrict petitioners' religious activities. On their face they are a restriction of the free exercise of those freedoms which are protected by the First Amendment. * * * Itinerant evangelists moving throughout a state or from state to state would feel immediately the cumulative effect of such ordinances as they become fashionable. The way of the religious dissenter has long been hard. But if the formula of this type of ordinance is approved, a new device for the supression of religious minorities will have been found. This method of disseminating religious beliefs can be crushed and closed out by the sheer weight of the toll or tribute which is exacted town by town, village by village. The spread of religious ideas through personal visitations by the literature ministry of numerous religious groups would be stopped."

It will further be noted that the provision defining "promoters" as heretofore quoted (#44.01, supra), includes a special exemption running in favor of bona fide paid officers and employees of social service agencies endorsed by the board. The conditions which a social service agency must meet to secure endorsement are set forth in a detailed separate ordinance, the relevant portions of which are incorporated in the majority opinion by marginal reference. One condition is: "(h) That the officers and employees of such corporation or association are persons of good moral character and reputation and that the corporation or association has exercised reasonable care in selecting persons of good moral character and reasonable experience as solicitors for its funds."

Apparently no bonding or license requirement is imposed upon these solicitor-employees, or in their behalf upon the organization they represent. Thus the solicitors for the organized charity hold a great primary advantage over the unorganized worker, with no sound reason for the discrimination. Graft and corruption can flourish, and fraud can emanate from high places as well as low, and through organization these evils are sometimes hidden and the more securely entrenched. Also the percentage of contribution retained to meet the expenses and recompense the employees of charitable institutions is apt to be higher than that retained by unorganized workers or sincere and humble religionists who sacrifice all in the practice of their religion. Abuses and breaches of trust do occur but who can say that the hazard is greater in unorganized classes of workers, whose illicit gains are probably small, compared with what is lost when a large institution becomes permeated with corruption.

Vital need exists for the individual as well as for the organized worker in both charitable undertakings and general benefits derived from the spreading of religious doctrines. There are many dark places where the light of organized charity does not penetrate—many needy whom it does not reach. To these people the tender ministrations of sincere and unfettered religionists bring succor and salvation. The unreasonable curtailment of this activity merely because some are addicted to fraudu-

lent and deceitful practices in the name of charity, is as unthinkable as would be the dissolution of established institutions merely because dishonesty and corruption have at times been uncovered in their administration. The public as a whole cannot be freed from the entire power of decision as to the worth of the cause for which they are solicited or their inclination to contribute. If the constitutional guarantees are to be upheld, then the public must expect to bear some portion of the burden of seeing that their gifts are made only to worthy and honestly administered causes.

Another objectionable provision of the ordinance is that which requires the promoter to furnish "a succinct statement of facts showing that the applicant • • • is of good character and reputation." Those who contribute to charity are not so much concerned with the "reputation" of the solicitor as they are with the intended use to which the donations are to be put. A most wicked man of public ill repute may espouse a very worthy cause or do a very good deed. Religionists and reformers are often called from the gutter whence they return to make expiation for their wrong doings by trying to save others from a like fate and to aid the redemption of those who may already have strayed. Forceful and effective work has been done by the reformed, turned reformer, and many of these people labor on without affiliation with any recognized institution and without financial help other than that gleaned through solicitation.

Hence, it would seem that if any statement is to be demanded in connection with a reasonable requirement for registration and identification it should embrace no more than an averment of present honesty and sincerity in the disbursement of money and property for the purpose for which they are solicited. Reputation is not an issue.

The requirement of section 44.19 that the officials may make an investigation and if "satisfied" that the applicant is of "good character and reputation" they may issue a license, places upon the applicant the burden of establishing this requirement as a condition precedent to the exercise of his right of religious liberty. Such a requirement

is not a sufficiently fixed and definite standard to safeguard the free exercise of the constitutional right here involved. In the exercise of their power the officials might conclude that an applicant does not qualify merely because of their opinion concerning his particular religious belief and creed. The way of the dissenter is usually hard and by reason of his views his reputation in the eyes of a large group, or a majority, may be far from good and his character at least questionable if not downright immoral. What fair qualification to the right of religious liberty can be conceived which limits its exercise to those who have good reputation and character, and denies it to those who have not?

It is said in Murdock *v.* Pennsylvania, supra (319 U. S. 105, 116): "Plainly a community may not suppress, or the state tax, the dissemination of views because they are unpopular, annoying or distasteful. If that device were ever sanctioned, there would have been forged a ready instrument for the suppression of the faith which any minority cherishes but which does not happen to be in favor. That would be a complete repudiation • • • of the Bill of Rights." And again in Cantwell *v.* Connecticut, supra, (310 U. S. 296, 310): "In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy."

Subdivision 6 of section 44.19 of the ordinance is also subject to criticism. It authorizes the revocation of the license where the licensee, in making the solicitation, is unfair, unjust, inequitable, or fraudulent. These grounds, except the one last stated, are vague and uncertain and may well result in the same religious censorship arising from a determination of good character and reputation.

Subdivision 8 of the section, dealing with the qualifications of solicitors for promoters, is subject to the same objections as the rest of the section. The only difference is the amount of the fee and the size of the bond. It requires a "good moral character," and a reputation for honesty that is good.

It is not an obstacle to plaintiff's attack on section 44.19 that it has not sought a license or that if the public officials act arbitrarily their action is subject to jurisdictional review. The section on its face operates as a prior censorship on the free exercise of religious liberty. (Cantwell *v.* Connecticut, supra.)

There is another ordinance which concerns the regulation of pawnbrokers, secondhand dealers, and junk dealers (Los Angeles Municipal Code, #24.01). Although its provisions must be considered in relation to the operation of the store or so-called industrial department of plaintiff, the subject need not be developed here, for from the evidence it is clear that the store partakes of enough of the character of a commercial enterprise to justify the restrictions imposed. In the main I can concur in the conclusions (although not the reasoning upon which they are based), expressed in the majority opinion with respect to this phase of the case. The store is not conducted as a profit making institution but is in the business of selling used property. The operations of junk dealers and pawnbrokers have long been recognized as a distinct class of business subject to regulation under the police power in order to facilitate the recovery of stolen property and the preservation of health. (See 43 C. J. pp. 389-390; 43 Id. 410-411; 16 C. J. S., Constitutional Law, #189.)

It is not contended that the regulatory provisions of section 24.01 are invalid if considered apart from the question of the guarantee of religious liberty. Even assuming that the section must be viewed in the light of the right of free exercise of religion, there seems to be nothing arbitrary or unreasonable in its regulatory requirements. The measure is patently a police regulation and the specified fee is not a tax for revenue. That fee does not have combined with it the other financial burdens imposed under the ordi-

nance dealing with promoters and hence it is distinguishable. Moreover, the operation of the store has most of the aspects of an ordinary commercial enterprise.

Such ordinance (Los Angeles Municipal Code, #24.01) provides that persons who are to engage in the regulated business must annually apply for and receive a written permit. Under subsection (c), entitled "Requisites of Permits," it specifies the following requirements or "standards": (1) The original application must state "by street and number the place where such business is proposed to be conducted" or, in the case of junk collectors having no fixed place of business, "their residence by street number." The application "shall be signed by the applicant and shall contain his residence address." (2) The payment in advance of an annual fee of $25 ($50, if jewelry, watches "or similar secondhand merchandise" is to be dealt in). (3) Upon receipt of the application "the Board shall cause to be investigated the business of the applicant and location at which applicant proposes to engage in business as specified in said application. Thereafter the Board may issue a permit * * * for the remaining portion of the current year." (4) Persons operating under the ordinance must "secure an annual renewal of such permit commencing January 1st of the succeeding year." (5) Persons holding "an ordinary" permit must apply for and secure a "special permit," "in the manner provided * * * for securing ordinary permits," before dealing in "secondhand jewelry, precious stones, precious metals, * * * watches or other similar secondhand merchandise."

Further, regulations or "standards" set by the ordinance include the following: "The Board shall not grant any permit * * * to persons who fail, refuse or neglect to comply with the laws and ordinances relating to and regulating the business for which such permit is sought"; "If persons holding permits * * * shall violate any of the provisions of this Section (the Municipal Code section setting forth the ordinance in question) or any provision of any other ordinance, or any law relating to or regulating any such business, or shall conduct or carry on such business in an unlawful manner, the Board * * * shall revoke such permit," but only upon following the procedure "in

the manner provided in Section 22.02 of this Code" (which procedure is not questioned); permit holders "shall file reports, on forms provided by the Chief of Police, listing the merchandise received or purchased on the preceding day, the hour of such receipt or purchase, the "true name and address of the party making the sale, delivery or pledge as nearly as the same is known to or can be ascertained by such person together with a description of such party;" the number of the pawn ticket issued, if a pledge is involved, and the amount loaned, and a description of each article pledged, received or purchased. The permit holder is also required to keep "a complete record of all goods • • • pledged to or purchased or received by him" which record "shall be open at all times during business hours to the inspection of any member of the Police Department."

The mentioned provisions (and the same is true of the further provisions not herein epitomized) are not unreasonable or uncertain. Substantially nothing more is required for an original permit than the payment of the moderate fee and the filing of the written and signed application giving the data as to the location of the proposed business and the applicant's name and residence address. The requirements for compliance with law and the keeping and filing of reports, etc., after commencing business, are reasonably related to the nature of the business and the purposes of the regulations. These latter provisions furnish a proper and exclusive standard for guidance of the board in passing on applications for renewals of permits or proceedings to revoke permits. The very moderate requirements for original issuance of permits, hereinabove set forth, leave little if anything, beyond the suitability of the proposed location, to the discretion of the board. This ordinance fully meets the constitutional requirements that regulatory laws of this type establish reasonable standards for the guidance of the permit-issuing board.

Defendants contend that injunctive relief is not available to plaintiff and that there is no showing of irreparable injury. Generally, public officers may be enjoined from enforcing an unconstitutional statute, and section 526(4) of the Code of Civil Procedure and section 3424(4) of the Civil Code have no application to such situations. (Brock

v. Superior Court, 12 Cal. 2d 605 (86 P. 2d 805); Bueneman v. City of Santa Barbara, 8 Cal. 2d 405 (65 P. 2d 884, 109 A. L. R. 895).) Where a criminal statute or ordinance causes irreparable damage to property rights, the injured party may attack its constitutionality in an action to enjoin its enforcement. (See Jones v. City of Los Angeles, 211 Cal. 304 (295 P. 14); Sullivan v. San Francisco Gas Etc. Co., 148 Cal. 368 (83 P. 156, 7 Ann. Cas. 574, 3 L. R. A. N. S. 401); Los Angeles T. Ins. Co. v. Los Angeles, 52 Cal. App. 152, 156 (198 P. 1001); San Diego T. Assn. v. East San Diego, 186 Cal. 252 (200 P. 393, 17 A. L. R. 513); and Abbey Land etc. Co. v. San Mateo, 167 Cal. 434, 438 (139 P. 1068, Ann Cas. 1915C 804, 52 L. R. A. N. S. 508).)

An interference with the solicitation by plaintiff of contributions is an interference with its property rights in the sense that its right to collect and then use the funds will be impeded. Even if it be assumed that no injury to property rights is threatened, it seems that injunctive relief would be appropriate to restrain the enforcement of a criminal statute where the attack thereon consists of a bona fide claim that the statute violates one of the personal liberties guaranteed by the Constitution, and that claim is not wholly lacking in merit on its face. In such case the injury consists of the consequences of the enforcement of the law to the person, viewed in the light of the exalted standing of the constitutional guarantees. These consequences under the procedure in this state are serious.

A violation of the ordinance being a misdemeanor, the case would be cognizable only in an inferior court. From that court the only appeal available is to the superior court, or to its appellate department. If that court denied relief plaintiff would have no recourse to this court or the district court of appeal by appeal or certiorari, although in the event of being imprisoned he would have the remedy of habeas corpus. (Portnoy v. Superior Court, 20 Cal. 2d 375 (125 P. 2d 487).) The cases heretofore cited are not determinative of the point. They merely state the rule that injunctive relief *will be given* if injury to property rights is threatened. That does not exclude such relief where the injury is to personal rights.

It has been recognized that personal rights may be protected by equity, and they obviously should be, as they are more sacred than property rights. It is said in 28 American Jurisprudence, Injunctions, section 71: "However, there have always been some clearly defined exceptions to the general rule, and there is a progressive tendency on the part of the courts to remedy by injunction, injuries to personal rights. This, is, perhaps, as it should be, because the personal rights of citizens are more sacred and, by every test, of more value than things that may be measured by a purely monetary standard, and the courts have expressed difficulty in understanding why injunctive protection of the one class of rights should be placed above similar protection of the other. It may be added that the courts with great uniformity base their jurisdiction to protect purely personal rights by injunction nominally on an alleged property right, where in fact no property rights are invaded, so that the rule seems to be one of those known chiefly by its breach rather its observance." (See also, 14 A. L. R. 295.) Section 526 of the Code of Civil Procedure does not limit the injury to property rights. On the contrary it authorizes an injunction where the acts would produce great or irreparable injury "to a *party* to the action." See Nation v. Chism, 154 Okla. 50 (6 P. 2d 766).

For the reasons above stated, I am of the opinion that the judgment of the trial court should be modified by restricting the injunctive relief to alleged violations of all provisions of the Municipal Code here involved except section 24.01 which I believe to be valid.

Schauer, J., concurred.

"Edmonds, *J.*, Dissent: In this case, the trial court, upon undisputed evidence, found that the Gospel Army was procuring donations for the purpose of furthering its religious activities. Because these funds are used in part for the purpose of giving relief to persons in distress, Mr. Justice Traynor declares, as a matter of law its activities are charitable and not religious. I cannot concur in that conclu-

sion, nor in the construction of the Los Angeles Municipal Code as requiring the issuance of permits to either organizations or promoters without an appraisal of "the nature or worthiness of a religious cause." And if, contrary to the evidence and findings of the trial court, the Gospel Army, as a matter of law, is a charitable institution, then, by the challenged ordinance it is arbitrarily denied the right to exist unless it complies with undisclosed standards of the commissioners and carries on its operations in accordance with arbitrary and unreasonable regulations.

As Mr. Justice Henshaw pointedly stated in considering an earlier ordinance of the city of Los Angeles, which, like the one now before the court, gave municipal authorities broad and arbitrary power over every institution ministering to human suffering and spiritual need, charity is a fundamental part of religion. Speaking of the work of the Salvation Army, he said: "Profoundly impressed with the Founder's sympathy for the poor and afflicted, and with His teachings that 'Now abideth faith, hope and charity, these three, but the greatest of these is charity,' and 'Now, the end of the commandment is charity out of a pure heart,' it has made its special field of religious work the relief of the destitute and rescue of society's outcasts. It has found that it cannot lead the spirit of the weary and heavy burdened without first ministering to his physical necessities. While 'man does not live by bread only,' he cannot live at all without bread. Therefore, the charitable organizations of the Salvation Army are vital, integral parts of its religious life and work" (In re Dart, 172 Cal. 47, 49).

The Gospel Army also endeavors to gain converts for its religious doctrines and carries on activities which minister to material need. The expense of conducting its work is largely met by donations of money and second hand goods solicited from the public. The net proceeds from each of these main sources of income go into the Army's treasury from which is paid the cost of religious services, free distribution of tracts and religious literature, as well as food, lodging, clothing and other necessaries for those in need. The record discloses no segregation of such funds on the books of the Army as being for a religious or for a charitable purpose. Upon this evidence the trial court found that

if the Gospel Army is required to comply with the provisions of the ordinance, such enforcement "will amount to a prior restraint on the exercise of their religious activities within the meaning of the Constitution of the United States * * *" Mr. Justice Traynor sweeps aside the evidence and the trial court's findings upon the ground that, as a matter of law, charity has no place in religion, and whenever an organization carrying on religious activities steps aside from the promulgation of its spiritual doctrines to extend a helping hand by the alleviation of human suffering, it becomes subject to onerous and restrictive regulations. So narrow a view of the practice of religion runs counter to all of the fine principles of human conduct which, more and more, are leading men of good will to help those less fortunate along the daily path. A religious man, it has been said, is one "whose light shines in the dark places of the earth through righteous acts and helpful deeds."

Large groups of citizens of every faith and creed are regularly devoting much time and effort, at great personal sacrifice, to the cause of those who are in need. If the work in behalf of the less fortunate among us is done in the name of or in connection with the promulgation of a religious doctrine, then the Los Angeles ordinance authorizes the Department of Social Service to add to the indifference, inertia and self interest which solicitation must always overcome, either the condemnation or damnation by faint praise of an official bureau which is authorized to reach a conclusion without regard to anything but the personal opinion of some administrative officer as to the worthiness of the purpose. Whatever is done in the name of religion for a charitable purpose, the ordinance declares in effect, is to be viewed with suspicion and distrust. There can be preaching without official intervention but any practice of Christian virtues is to be carried on only under the watchful eye of the Department of Social Service according to its notions of "the public interest." And yet my associates say that such legislation lays no restraint upon religion freedom.

It is, of course, true that reasonable regulations may be imposed upon an organization carrying on religious activities. The rule, as stated by the Supreme Court of the United States is that "The general regulation, in the pub-

lic interest, of solicitation, which does not involve any religious test and does not unreasonably obstruct or delay the collection of funds, is not open to any constitutional objection, even though the collection be for a religious purpose."

More specifically, the court declared that "a State may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and authority to act for the cause which he purports to represent" (Cantwell v. Connecticut, 310 U. S. 296, at pp. 304, 306). But the ordinance here challenged goes far beyond these limits.

As the statute reads, its provisions shall not be applicable to "solicitations made solely for evangelical, missionary, or religious purpose." These terms are not defined, yet the lawmakers provided "that in any case where it shall come to the attention of the Board that any solicitation has been or is being or intended to be made for evangelical, missionary or religious purposes but in such manner as in the opinion of the Board is calculated to give or may give the impression to the person or persons solicited in any such solicitation or to the public that the purpose of such solicitation is either in whole or in part charitable, then the Board, if in its opinion the public interest will be subserved thereby, shall investigate the matter of such solicitation and give publicity to its findings thereon in such manner as it may deem best to advise the public of the facts of the case" (Sec. 44.16). If this curious language means anything, it extends the exemption to any solicitation in behalf of a religious organization for a purpose in whole or in part charitable but allows the Board of Social Service Commissioners to state to the public, "in such manner as it may deem best," its official disapproval of any such practical application of the Master's teachings to human need or of the methods by which help is being extended. Under that construction of the exemption provision, no license for the appellant's solicitations may be required. But it probably would be more disastrous to the work of a religious organization to arbitrarily and publicly condemn its activities than to require it to obtain a license, and equally violative of constitutional guarantees.

But considering the provisions of the ordinance from the standpoint that, under its express terms, only solicitation for contributions to meet the expense of doctrinal church activities is exempt from regulation, although the good works done by an organization such as The Gospel Army are, to borrow Mr. Justice Henshaw's words, "vital, integral parts of its religious life and work," no person may solicit a contribution for its support who has not obtained an "information card." Such a card is issued by the Department of Social Service only following the filing of a "notice of intention" to solicit, which shall include the detailed information specified by section 44.05 of the Code (ante, p. ——). This information is not limited to facts relating to the identity of the proposed solicitor and his authority to act for a particular organization. Also there must be submitted detailed information relating to the organization's purpose and business affairs and those who are supporting it financially or employed in its activities. In short, all of the data demanded concern the merits of the cause which is asking the public for assistance and the scope of the work it is carrying on.

Moreover, the information card which allows one to solicit, providing he presents it to the person who is approached for a donation, "allowing him sufficient opportunity to read the same, before accepting any contribution • • •" (sec. 44.12), is not issued as of course upon the filing of the notice of intention. There is neither requirement nor even suggestion in the ordinance to support Mr. Justice Traynor's suggestion that these cards, "which are in effect permits to solicit, are issued automatically upon the filing of the required information and the payment of the 4¢ for each card." On the contrary, the Department of Social Service shall have the power: "(a) To investigate the allegations of the Notice of Intention, or any statement or reports; (b) To have access to and inspect and make copies of all books, records and papers of such person, by or on whose behalf any solicitation is made; (c) To investigate at any time the methods of making or conducting any such solicitation • • •" (Sec. 44.03).

A majority of the court sanction the indefinite terms of the ordinance relating to the issuance of a permit upon

the presumption that the Board of Social Service Commissioners will fairly investigate the facts in connection with each application and promptly make a determination upon them. It may not be assumed, say my associates, that the Board will whimsically or capriciously deny an application, and the courts will relieve from unjust and arbitrary action. The same argument was advanced by the state in Cantwell v. Connecticut, supra, and summarily rejected. The opportunity to obtain judicial correction, said Mr. Justice Roberts, speaking for the court, does not justify interference with constitutional rights. "The availability of a judicial remedy for abuses in the system of licensing still leaves that system one of previous restraint which, in the field of free speech and press, we have held inadmissible. A statute authorizing previous restraint upon the exercise of the guaranteed freedom by judicial decision after trial is as obnoxious to the Constitution as one providing for like restraint by administrative action" (p. 306).

Moreover, the inquisitorial authority of the Department is a continuing one. "Whenever, in the opinion of the Board of Social Service Commissioners the Notice of Intention does not disclose sufficient information for the public concerning the facts * * * required to be stated in such Notice or concerning the person or association making such solicitation or on whose behalf such solicitation is made, then, upon the request of said Department, there shall be filed, in writing, within forty-eight (48) hours after such request, such additional information as may be required by said Board upon the foregoing subjects." (Sec. 44.06.) This right may be exercised after the Board has made an investigation, and there is no limitation upon the time within which inquiries must be concluded. Also, there is no restriction upon the number of additional requests the Board may make for information, or any time fixed in the ordinance to prevent the Board from taking months to look into the purpose and scope of an organization's activities; designed delay is invited by the censorious terms of the legislation, and the wildest discretion is given to harass, condemn, delay and obstruct. And if perchance the applicant represents an unpopular cause, then the authority of the Board of Social Service Commissioners

to publish the results of its investigations "by such means as may be deemed best to reach the general public and persons interested" (Sec. 44.02) gives opportunity for the undermining of public confidence and provides a vehicle for vehicle for official propaganda which may do irreparable damage.

Occasion for discrimination is also afforded by section 44.03 which allows the Department of Social Service to issue an information card in a form stating either that the authorization given does or does not constitute an endorsement of the charitable association for which solicitation is to be made. Moreover, the information card may show the pertinent facts set forth in the notice of intention and any additional information "as shall in the opinion of the Board be of assistance to the public to determine the nature and worthiness of the purpose for which the solicitation is made * * *" The information card which the solicitor must carry with him, and either read to each prospective contributor or present to such person for his perusal, allowing him sufficient time to read it before accepting any donation, may therefore be a sizeable volume of data which in practice, if not in purpose, will effectively block public support of an organization which has a legitimate purpose and against which no cricism justly may be made.

To meet the demands of the city, the receipt required for each donation must be signed by the solicitor and contain "in addition to a description of the amount and kind of the contribution, substantially the following matters: (a) The name of the association, if any, in whose name or upon whose behalf the solicitation is made. (b) A statement as to whether the contribution solicited is to be applied for the general purposes of such association, if any, or for specific purposes, and if for specific purposes the nature thereof shall be clearly stated. (c) A statement that the Information Card, issued by the Department, was presented to the person making the contribution for his perusal prior to receipt by the solicitor of the contribution receipted for * * *" (Sec. 44.15.) Only by means of a traveling office could a solicitor comply with all these requirements.

As justification for his position, Mr. Justice Traynor asserts that "activities characteristic of the secular life

of the community may properly be a concern of the community even though they are carried on by a religious organization." A host of decisions is cited in support of that statement. But the cases relied upon are authority only for the proposition that certain activities such as the sale of religious periodicals by minors, beating a drum on the traveled portions of the city streets, and parades, although carried on by a church, are subject to reasonable regulation by the State under its police power; they do not purport to declare what may be done in the field of reasonable regulation of solicitation for religious purposes. Indeed, excluding *In re Dart, supra,* only two of them concerned the constitutionality of a statute regulating the solicitation of funds. One of these two, Prince *v.* Massachusetts, 321 U. S. 158, upheld a statute restricting the activity of minors. The other decision, Murdock *v.* Pennsylvania, 319 U. S. 105, expressly excluded consideration of the question now in controversy, for the court declared that there was no issue before it in regard to a registration system for solicitors.

As to *In re Dart, supra,* the statement from it which is quoted in the majority opinion has no application to solicitation for religious work; it concerns the regulation of organizations which seek contributions for charitable purposes. The declaration that, under the police power, there may be reasonable supervision over persons engaged in the occupation of obtaining money from the public for the maintenance of an organization carrying on charitable work is followed by the pronouncement: "Every person has the right, under our constitution, and perhaps withouts its guarantee, to solicit contributions for a worthy charitable purpose, provided he acts in good faith and honestly applies them to that purpose. The ordinance gives the commission power to deprive persons of that right without cause or reason. To the extent that they give this arbitrary power they are contrary to the constitution and void." (*In re Dart, supra,* p. 57). Certainly the constitutional guarantee gives as much, if not greater, protection to religious endeavors which include ministration to relieve human suffering. For as James wrote concerning faith without works, "If a brother or sister be naked, and destitute of daily food,

And one of you say unto them, Depart in peace, be ye warmed and filled; notwithstanding ye give them not those things which are needful to the body; what doth it profit?" (Jas. 2:5, 16.)

But if the practice of religion may be legally isolated beyond the contaminating reach of charity, then, in my opinion, the legislation is vulnerable to attack as unlawfully circumscribing the activities of every organization which carried on its work without the profession of religious doctrine. Unquestionably the occupation of the solicitation of contributions for charitable purposes may be subjected to regulation, but legislatures or municipalities may not, under the guise of the police power, impose unnecessary and unreasonable restrictions upon the use of private property or the pursuit of useful activities. (McKay Jewelers Inc. *v.* Bowron, 19 Cal. 2d 595; In re Fuller, 15 Cal. 2d 425; Skalko *v.* City of Sunnyvale, 14 Cal. 2d 213; In re Monrovia Evening Post, 199 Cal. 263; Frost *v.* City of Los Angeles, 181 Cal. 22; Ex parte Dickey, 144 Cal. 234; Larson *v.* Bush, 29 Cal. App. 2d 43.) Also the general and indefinite terms used in the ordinance wholly fail to meet the constitutional requirement that a regulatory statute must specify a standard for official action. (In re Dart, 172 Cal. 47; Hewitt *v.* State Board of Medical Examiners, 148 Cal. 593; Schaezlein *v.* Cabaniss, 135 Cal. 469; County of Los Angeles *v.* Hollywood Cemetery Assn., 124 Cal. 349; Ex parte Sing Lee, 96 Cal. 359; Yick Wo *v.* Hopkins, 118 U. S. 356; Hoyt Bros. Inc. *v.* Grand Rapids, 260 Mich. 447.)

The provisions of the Municipal Code which have been summarized in connection with the discussion concerning their application to the charitable work of a religious organization, effectively hamper and restrict any endeavor to better the lot of those in need of material aid and comfort if that effort does not conform to an undisclosed standard. The work of every organization must meet the approval of the department; such as do not, are unfit to live. Moreover, in its practical aspects the ordinance is particularly burdensome upon organizations such as the Gospel Army, which continually solicits donations. "Every person soliciting any contribution for any charitable purpose must file with the Department within 30 days after the close

of any such solicitation or within 30 days after a demand therefor by the Department a report to the Department, stating the contributions secured from or as a result of any such solicitation, and in detail all expenses of or connected with such solicitation, and showing exactly for what uses and in what manner all such contributions were or are to be disbursed or distributed." (Sec. 44.14.) What constitutes "the close of any such solicitation?" And to what extent must the organization show "exactly for what uses and in what manner all such contributions were or are to be disbursed or distributed?" Is every person who is a beneficiary of the organization's helpfulness to be named? Is the value of that aid to be stated in terms of money or spiritual comfort? Must a substantial part of the effort intended for human betterment be devoted to making reports to a governmental agency set upon the minute and continuing supervision of all charitable activities?

Very obviously, the purpose of these reports is to provide a basis for keeping each organization within the range of a policy which is not stated in the ordinance and may be as variable as differing views upon permissible bounds of social service. For an information card may be recalled by the Board upon receipt of data which, in its opinion, shall render incorrect any statement set forth in that document. Under such circumstances, the Board shall amend or correct the card, or issue a new one in accordance with the additional data obtained. But impliedly each card is to be issued for a period which need not be uniform as to all applicants, and is valid only during that time (sec. 44.02). Under those provisions, only by carrying on its work in accordance with the views of the Board of Social Service Commissioners, and making reports in such detail as to satisfy demands which cannot be measured against any standards set by law, may an organization continue.

Also, there is no standard or limitation provided in regard to the data printed upon the information card. As a solicitor must show this card to each prospective donor, allowing him sufficient opportunity to read it before accepting any contribution, the Board may arbitrarily express disapproval of a worthy charity or make the information so voluminous that solicitation would be effectively blocked.

And the unlimited power given to the Board to publish the results of its investigations is broad enough to authorize presentation to the public of confidential data concerning policies and details of management having no relation to reasonable licensing requirements.

If an organization runs the gauntlet of these provisions and is able to carry on its work to the satisfaction of the official censors of charitable purposes, every person whom it employs for "pecuniary compensation or consideration" to obtain subscriptions from the public must also secure a license. The way of an applicant for such a license is a hard one. In his application he must set forth, in addition to facts showing that he "is of good character and reputation", "such information as may be required by the Board." Thereupon, the Board shall make such investigation of the applicant and his affairs as it deems advisable. No limitation as to the extent of such an investigation is imposed and no time is fixed within which it must be concluded. Any ground that would have led to a denial of the license is also ground for its revocation.

If, contrary to the narrow interpretation of religion laid down by my associates, human kindness is included in its practice, then these provisions governing the licensing of individuals to solicit contributions are clearly invalid, for they go much further than to lay down a reasonable requirement for registration and identification. Indeed, there is no statutory statement of the data which an applicant must submit, for the specified information is "in addition" to that which may be required by the Board. The majority allows the regulation of solicitation for religious purposes to go far beyond the limitation specified by the United States Supreme Court in the *Cantwell* case, *supra*, by approving the requirements that a promoter or solicitor be granted a license only if the Board is satisfied that he is of good character and reputation and equal to the financial responsibility incident to the proposed solicitations that he file a bond and pay a license fee; and that he give a complicated form of receipt to each contributor. The provision authorizing the revocation of a license after a hearing, for any "unfair, unjust, inequitable or fraudulent" act or for any ground that would have led to a denial of the license

also goes far beyond the permissible bounds fixed for regulation of solicitation for a religious purpose.

And construing any organized plan for taking care of those in need of material aid as beyond the reach of religious duty or concern, the licensing provisions which have been mentioned in the next to the last paragraph unreasonably restrict the right of an individual to engage in the business of solicitation for charitable purposes and also fail to set up a definite standard which the applicant for a license must meet. The cases cited by the majority as authority for the proposition that a promoter or solicitor may be required to submit proof of his good character and reputation stand only for the rule that a state may do so in connection with regulation of the practice of a profession which requires the possession of special knowledge, skill and training, or the sale of merchandise of a particular character. (Leach *v.* Daughterty, 73 Cal. App. 83 (broker's certificate under the Corporate Securities Act); Riley *v.* Chambers, 181 Cal. 589 (license of real estate broker); Gundling *v.* Chicago, 177 U. S. 183 (license for sale of cigarettes).) These decisions, in my judgment, have no application to legislation laying down licensing requirements for the business of soliciting funds for charitable purposes.

A recent controversy in Michigan presented substantially the same question as is now before this court. An ordinance which prohibited the solicitation of contributions or the sale of goods "the proceeds from which, or any part thereof, are to be used for any so-called charitable purpose" without a written permit to be granted by the city manager, when it appeared, after investigation and report by a police officer, "that the charity is a worthy one" and that the applicants for a permit "are fit and responsible parties", was held to violate the provisions of a state constitution prohibiting deprivation of life, liberty, or property without due process of law. "It is requisite to the validity of the ordinance", said the court, "that it should state 'a standard for the guidance' of the official who passes upon the application for the permit. * * * The general and indefinite terms used in this ordinance wholly fail to comply with this requisite." (Hoyt Bros. Inc. *v.* Grand Rapids, *supra*, (128 A. L. R. 1363.)

Turning to the other provision of the Los Angeles Municipal Code which is in controversy, although, generally, speaking, the business activities of a religious organization come within the scope of regulations tending to protect the morals, safety or general welfare of the public, section 24.01 relating to dealers in second hand goods is also unconstitutional for the reason that it sets no standard to which an applicant for a license must conform. To carry on the business of a "secondhand dealer", one must "file an application in writing with the Board (of Police Commissioners) specifying by street and number the place where such proposed business is proposed to be conducted or carried on; * * * The application shall be signed by the applicant and shall contain his residence address. Upon receipt of such application the Board shall cause to be investigated the business of the applicant and location at which applicant proposes to engage in business as specified in said application. Thereafter the Board may issue a permit to the applicant which shall be effective for the remaining portion of the current year."

This enactment states no grounds justifying a denial of the application, specifies no time within which an investigation must be made, makes no provision for a hearing upon the application, and by the use of the word "may", impliedly allows the Board to grant or withhold official favor for any reason which whim or fancy may dictate. No standard of character or business responsibility is set for the guidance of the Board nor are there any qualifications specified for one desiring to deal in second hand goods. Such legislation has uniformly been held not to measure up to the requirements of constitutional guarantees. (In re Dart, *supra*; Hewitt *v.* State Board of Medical Examiners, *supra*; Schaezlein *v.* Cabaniss, *supra*; County of Los Angeles *v.* Hollywood Cemetery Assn., *supra*; Ex parte Sing Lee, *supra*; Yick Wo *v.* Hopkins, *supra*; Hoyt Bros. Inc. *v.* Grand Rapids, *supra*.)

Under these circumstances, in my opinion, as the right of The Gospel Army and those acting in its behalf to solicit contributions for either religious or charitable purposes is a property right, the unlawful interference with which

will cause irreparable injury, the trial court properly enjoined the enforcement of the ordinances here challenged (Brock *v.* Superior Court, 12 Cal. 2d 605; Bueneman *v.* City of Santa Barbara, 8 Cal. 2d 405), and the judgment should be affirmed."

(4718)